TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 185.

HENRY MILLER, THOMAS REA, AND JAMES P. SERGEANT,
PLAINTIFFS IN ERROR,

vs.

GEORGE W. DALE, GEO. ANSON, D. C. RIDDLE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JUNE 3, 1874.

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a The answer of the judges of the supreme court of the State of California:

The record and proceedings of the plaint whereof mention is within made, with all things touching the same, we certify, under the seal of our supreme court, to the Supreme Court of the United States of America within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[SEAL.] GRANT I. TAGGART,
Clerk of the Supreme Court of the State of California.

b UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of California, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry Miller, Thomas Rea, and James P. Sergeant, plaintiffs and appellants, and George W. Dale, Geo. Anson, S. Riddle, D. C. Riddle, Thomas Roe, Robert M. Phelps, William S. Phelps, Electa Ousley, John A. McCloskey, James Muir, Lawrence Hearney, Simry Hahn, P. Francis Hoey, William Hartshorn, Ledgard Fine, Spencer P. Fine, George Eastin, Oscar D. Dryden, Joseph H. Duncan, Dixin S. Duncan, Adele Devereux, John Dowdy, Perry Dowdy, John Castello, Connelly Cochran, John Burchell, Orlando Bodfish, William W. Beauchamp, Elisha E. Brock, Hester D. Adams, W. Z. Augney, Keziah Campbell, Euclid N. McCutchen, Maxie McCutchen, J. Ousley, Orrin Dowdy, Charles M. Day, James Means, James Hoover, John Hoover, Francisco Deming, Thomas Gaines, William Thornton, Washington Evans, John Norris, Orrin Dowdy, R. Campbell, and William N. Furlong, defendants and appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in
c favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiffs and appellants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right

and according to the laws and custom of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the said Supreme Court, the twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Issued 20 February, 1874.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

STEPHEN J. FIELD,
Associate Justice of U. S. Sup. Ct.

d The United States of America to George W. Dale, George Anson, S. Riddle, D. C. Riddle, Thomas Roe, Robert M. Phelps, Wm. S. Phelps, Electa Ousley, John A. McCloskey, James Muir, Lawrence Hearney, Simry Haun, P. Francis Hoey, William Hartshorn, Ledgard Fine, Spencer P. Fine, George Eastin, Oscar D. Dryden, Joseph H. Duncan, Dixin S. Duncan, Adele Devereux, John Dowdy, Perry Dowdy, John Castello, Connelly Cochran, John Burchell, Orlando Bodfish, William W. Beauchamp, Elisha E. Brock, Hester D. Adams, W. Z. Angney, Keziah Campbell, Euclid N. McCutchen, Maxie McCutchen, J. Ousley, Orrin Dowdy, Charles M. Day, James Means, James Hoover, John Hoover, Francisco Deming, Thomas Gaines, William Thornton, Washington Evans, John Norris, Orrin Dowdy, R. Campbell, and William N. Furlong, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of California, wherein Henry Miller, Thomas Rea, and James P. Sergeant are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Stephen J. Field, associate justice of the Supreme Court of the United States, this twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-four.

STEPHEN J. FIELD,
Associate Justice of U. S. Sup. Ct.

e We admit due service of the within citation this 25th day of March, A. D. 1874.

WM. M. LOVELL,
MOORE, LAINE & SILENT,
W. E. SPENCER,
Atty's for Defendants.

f HENRY MILLER ET ALS., PLAINTIFFS,
vs.
GEORGE W. DALE ET ALS., DEFENDANTS.

UNITED STATES OF AMERICA,
State of California, ss:

John Reynolds, having been duly sworn, upon his oath says that he

is an attorney of the Supreme Court of the United States, and resides in the city of San José, in the State of California; that on the 25th day of March, A. D. 1874, he delivered to and left with L. Archer, esq., in person, the attorney for the defendants in error, named in the within and annexed citation and writ of error, a true copy of said citation; that said copy of said citation was so delivered to and left with said L. Archer, at his office in said city of San José; that said L. Archer is the same person whose name appears in the annexed transcript of the
g record in said cause as attorney of record therein for said defendants, and he is and has been their sole and only attorney of record in said cause in all proceedings had therein, since the motion for a new trial thereof was made in the court in which said cause was instituted; that Thompson Campbell, whose name also appears in said transcript of said record as counsel for said defendants, died before said motion for a new trial was made.

And deponent further says that a true copy of said writ of error was, at the time of service thereof, deposited in the office of the clerk of the supreme court of the State of California.

JOHN REYNOLDS.

Subscribed and sworn to before me this 19th day of May, A. D. 1874.
[SEAL.] E. W. ARAM,
Notary Public.

h In the Supreme Court of the United States.

HENRY MILLER ET ALS., PLAINTIFFS IN error,
vs.
GEORGE W. DALE ET ALS., DEFENDANTS in error.

To the Hon. S. J. Field, justice of the Supreme Court of the U. S.:

The petition of S. O. Houghton respectfully shows: that he is a resident of the State of California; that said action is ejectment; that it was instituted by said plaintiffs to recover of the defendants the possession of certain lands lying in said State to which the plaintiffs claimed title at the time said action was commenced, under a grant thereof made by the Mexican government before the cession of California to the United States; that said grant has been finally confirmed by the tribunals of the United States having jurisdiction therein, under and pursuant to the provisions of the act of Congress entitled "An act to ascertain and settle private land-claims in the State of California," approved March 3d, 1851, and the boundaries thereof defined and
i finally located by the district court of the United States, under and pursuant to the provisions of the act of Congress entitled "An act to amend an act to define and regulate the jurisdiction of the district courts of the United States in California, in regard to the survey and location of confirmed private land-claims," approved June 14th, 1860. That since said action was commenced, the said plaintiffs have conveyed the demanded premises to your petitioner, who is now the owner and holder of the title thereto, confirmed and located as aforesaid; that said cause has been finally decided adversely to the title of said plaintiffs in error, and of your petitioner, by the supreme court of the State of California, which is the court of last resort in said State. That the value of the property in controversy in said action is more

than one hundred thousand dollars. That on the trial and final decision of said action there was drawn in question the construction and effect of said acts of Congress before mentioned, and the title of your petitioner thereunder, and said final decision denies the rights and title asserted by him under said acts of Congress.

Wherefore your petitioner prays that a writ of error may be allowed from the Supreme Court of the United States to the supreme court of the State of California, to review the said decision and judgment of said State court, and to correct the manifest errors therein.

S. O. HOUGHTON.

j DISTRICT OF COLUMBIA,
City of Washington, ss :

S. O. Houghton, having been duly sworn, upon his oath says that he is the petitioner named in the foregoing petition, that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

S. O. HOUGETON.

Subscribed and sworn to before me this 17th February, A. D. 1874.
[L. S.] JAS. H. McKENNEY,
Notary Public, District of Columbia.

In the Supreme Court of the United States. On writ of error to the supreme court of the State of California.

Know all men by these presents that we, Henry Lux and Jacob Heft, both residents and freeholders in the State of California, are held and firmly bound unto George W. Dale and others, who are named as defendants in said writ of error, and to their executors and administrators, in the sum of five hundred dollars, to be paid to the said de-
1 fendants in error, their executors or administrators, to which payment, well and truly to be made, we bind ourselves jointly and severally, and our and each of our executors and administrators, firmly by these presents, sealed with our seals and dated December 9th, 1873.

Whereas Henry Miller, Thomas Rea, and James P. Sargent are about to prosecute a wr't of error from the Supreme Court of the United States, to reverse the judgment of the supreme court of the State of California, in an action wherein said Henry Miller, Thomas Rea, and James P. Sargent are plaintiffs, and said George W. Dale and others are defendants:

Now, therefore, the condition of this obligation is such that if the above-named Henry Miller, Thomas Rea, and James P. Sargent shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY LUX. [SEAL.]
J. HEFT. [SEAL.]

UNITED STATES OF AMERICA,
County of Santa Clara, State of California, ss :

Henry Lux and Jacob Heft, the sureties named in the foregoing bond, being each duly sworn, each for himself says that he is a resident of said State of California and a freeholder therein, that he is worth

2 double the amount of the penalty of the above bond over and above his property which is by law exempt from execution.

HENRY LUX.
J. HEFT.

Subscribed and sworn to before me this 9th day of December, 1873.

CHAS. SILENT,
Commissioner of the U. S. Circuit Court for California.

3 In the supreme court of the State of California.

Complaint.

In the district court of the third judicial district of the State of California, in and for the county of Santa Clara.

HENRY MILLER, THOMAS REA AND JAMES P. SARGENT, plaintiffs,
vs.
GEORGE W. DALE, GEORGE ANSEN, JOHN Adams, Hester Adams, William Z. Angney, Beacham, Beauchamp, Preston Bullard, Samuel Bannister, Rafael Basques, Alexander Basques, Orlando Bodfish, Elisha E. Brock, John Burchill, John Castello, William Carey, Lewis W. Cledenning, Conly A. Cochran, John Caupman, James D. Culp, Corey, Campbell, James A. Dunn, Charles M. Day, John Dowdy, Hayden Dowdy, Major Dowdy, Orrin Dowdy, Richard Dowdy, Meridy Dowdy, Peryy Dowdy, Hanson Dowdy, Francis Dunning, Devaux, Oscar D. Dryden, Dixon S. Duncan, Joseph H. Duncan, Washington A. Evans, George Easton, Washington Ebbens, Lidgard Fine, Pettus S. Fine, Charles Francois, Thomas Gains, John Hoover, James Hoover, James Hildebrand, Silas Hysell, Hysell, Lawrence Heany, William Hanna, Peter F. Hoey, Zirrori Haun, William Hartshorn, Hawkins, Francis Janes, James W. Johnson, John McCroskey, James Moore, James Means, John Morris, John A. McCroskey, Euclid N. McCutcheon, Maxie McCutcheon, Miriworth E. McCutcheon, James Mirr, Levi Nell, John Norris, Philip Norris, Ousley, John S.
4 Ousley, Phelps, Richard Perry, Nathan Porter, Riddle. Riddle, Joseph Rucker, William D. Rucker, John S. Rucker, Thomas Roe, Guadalupe Romano, John M. Schell, John Schores, David McC. Stoody, John N. Tichell, William W. Thornton, Thorn, John White, George T. Arthur, John H. Adams, John H. Adams, sr., C. W. Armstrong, Alfred

Chappell, Robert Catherwood, C. H. Decker, C. M. Day, Daniel C. Day, H. H. Dougherty, S. E. Dougherty, James H. Ellis, James W. Evans, Mrs. J. Evans, William Evans, Mrs. A. Evans, William N. Furlong, Truman Farman, J. W. Gould, F. Gowey, David Huber, William L. Hoover, Thomas F. Hassel, John Harrison, Henry Heydeman, Thomas Hawkins, John Johnson, F. M. Johns, Daniel Lloyd, Andrew J. Myers, John Morris, Robert Peterson, Lucy Phillips, A. Richardson, N. H. Rose, E. W. Saxe, John H. Stemmerman, Fred Taylor, William Tennant, E. A. Thayer, John Morris, John Morris, jr., H. D. Van Schaick, Hiram Van Gundy, George W. Van Gundy, Dwight S. Whitney, Christian Wentz, Albert W. White, Oliver Wyall, Dorson Wilson, Mary Wilson, David Zuke, John Zuke, A. T. Zuke, Albert Page, John Doe, Richard Roe, Jas. Smith, Richard Smith, Sam Smith, Juan Smith, Jonas Smithouseus, Jenloff Smithous, Johannus Smithus, Givannie Smitzi, Stans Smith, Jean Smeets, Jabon Shimmit, Jon. Smikton, Von Seef, John Finn, Dick Finn, John Den, Richard Den, John Ren, Richard Ren, Judas Ren, William Ren, Thad Stephens, Charles Sumner, Windy Phillips, and Ben Wade, defendants.

The complaint of the above-named plaintiffs respectfully shows to the court, that on or about the 5th day of January, A. D 1865, they were seized in fee-simple of, and were the owner of an undivided interest, equal to about three-fourths (¾) of the tract of land hereinafter described, and entitled to the possession of the whole thereof, which said tract of land is situated in the county
5 of Santa Clara, State of California, and bounded and described as follows, to wit: beginning at a redwood post at the S. W. point of the foot of Lomitas de las Limares, on the line of the final official survey of the Las Animas, marked "L," "A. No. 11," and "S. No. 11," a witness-tree bears S. 36½° W., seven chains and ninety links distant, and another S., 64° E., nine chains and twenty-one links distant, and running thence with the true meridian, the variation of the magnetic needle being 15° 20′ east; thence S. 4½ W., one hundred and seventy-nine chains and twenty-five links to a redwood post, marked "S. No. 10," from which a clump of four sycamores bears S. 62° E., two hundred and fifty-eight links distant; thence west three hundred and thirty-seven chains seventy-seven links to a redwood stake marked "S. No. 9," from which a witness-tree bears S. 60° W. eighty-five links distant, and another, N. 27° W., thirty-three links distant, and also another S. 22° E. eight links distant; thence N. 46 chains and twenty links to a redwood post, marked "S. No. 8," at corner to sections five, (5,) six, (6,) thirty-one, (31,) and thirty-two, (32,) on line between townships ten (10) and eleven (11) south, range three east; thence N. 52½° W. eighty-four chains and thirty links to a post on the line of the final official survey of the rancho Las Animas; and thence along the final survey of
6 the Las Animas to the point of beginning; containing about five

thousand one hundred and forty-one (5,141) acres of land, and being a part and parcel of the tract of land known as the rancho Las Animas.

That plaintiffs being so seized in fee-simple and owners of and entitled to the possession of said above-described tract of land, the above-named defendants, on or about the 5th day of January, A. D. 1865, wrongfully and unlawfully entered upon said premises and ousted and ejected these plaintiffs therefrom; and from that time hitherto have unlawfully and wrongfully withheld, and now do withhold, the possession of said premises from these plaintiffs, to their damage in the sum of one thousand dollars, ($1,000.)

And plaintiffs further show to the court and aver that the rents and profits of said premises are of great value, to wit, of the value of about fifteen thousand dollars ($15,000) per annum; that the said defendants have received all of the said rents and profits of the said described premises since the 5th day of January, A. D. 1865, and have refused, and still do refuse, to pay to these plaintiffs any part thereof.

Wherefore plaintiffs pray judgment against said defendants for the possession and restitution of the said lands and premises, and for the sum of thirty-three thousand seven hundred and fifty dollars,
7 ($33,750,) their proportion of the said rents and profits; and for the further sum of one thousand dollars ($1,000) damages as aforesaid, and for their costs and disbursements in this behalf expended.

WILLIAMS & THORNTON,
Attorneys for Plaintiffs.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Henry Miller, being first duly sworn, deposes and says that he is one of the plaintiffs named in the above-entitled action; that he makes this affidavit on behalf of his co-plaintiffs, as well as on his own behalf; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matter therein stated on information or belief, and that as to those matters he believes it to be true.

HENRY MILLER.

Subscribed and sworn to before me this 9th day of March, A. D. 1868.
[SEAL.] W. H. CHEVERS, *Notary Public.*

(Indorsed:) Filed March 19th, 1868. John B. Hewson, clerk.

8 *Summons.*

[Title of court and cause.]

The people of the State of California send greeting to George W. Dale George Ansen, John Adams, Hester Adams, William Z. Angney, Beacham, Beauchamp, Preston Bullard, Samuel Bannister, Rafael Basques, Alexander Basques, Orlando Bodfish, Elisha E. Brock, John Burchill, John Castello, William Carey, Lewis W. Clendenning, Conly A. Cochran, John Caupman, James D. Culp, Corey, Campbell, James A. Dunn, Charles M. Day, John Dowdy, Hayden Dowdy, Major Dowdy, Orrin Dowdy, Richard Dowdy, Meridy Dowdy, Perry Dowdy, Hanson Dowdy, Francis Dunning, Devaux, Oscar D. Dryden, Dixon S. Duncan, Joseph H. Duncan, Washington A.

Evans, George Easton, Washington Ebbens, Lidgard Fine, Pettus S. Fine, Charles Francois, Thomas Gains, John Hoover, James Hoover, James Hildebrand, Silas Hysell, Hysell, Lawrence Heany, William Hanna, Peter F. Hoey, Zirrori Haun, William Hartshorn, Hawkins, Francis Janes, James W. Johnson, John McCroskey, James Moore, James Means, John Morris, John A. McCroskey, Euclid N. McCutcheon, Maxie McCutcheon, Meriworth E. McCutcheon, James Mirr, Levi Nell, John Norris, Philip Norris, Ousley, John S. Ousley, Phelps,
9 Richard Perry, Nathan Porter, Riddle, Riddle, Joseph Rucker, William D. Rucker, John S. Rucker, Thomas Roe, Gaudalupe Romano, John M. Schell, John Schores, David McC. Stoody, John N. Titchell, William W. Thornton, Thorne, John White, George T. Arthur, John H. Adams, John H. Adams, sr., C. W. Armstrong, Alfred Chappell, Robert Catherwood, C. H. Decker, C. M. Day, Daniel C. Day, H. H. Dougherty, S. E. Dougherty, James H. Ellis, James W. Evans, Mrs. J. Evans, William Evans, Mrs. A. Evans, William N. Furlong, Truman Farman, J. W. Gould, F. Gowey, David Huber, William L. Hoover, Thomas F. Hassel, John Harrison, Henry Heydeman, Thomas Hawkins, John Johnson, F. M. Johns, Daniel Lloyd, Andrew J. Myers, John Morris, Robert Peterson, Lucy Phillips, A. Richardson, N. H. Rose, E. W. Saxe, John H. Stemmerman, Fred. Taylor, William Tennant, E. A. Thayer, John Morris, John Morris, jr., H. D. Van Schaick, Hiram Van Gundy, George W. Van Gundy, Dwight S. Whitney, Christian Wentz, Albert W. White, Oliver Wyall, Dorson Wilson, Mary Wilson, David Zuke, John Zuke, A. T. Zuke, Albert Page, John Doe, Richard Roe, Jas. Smith, Richard Smith, Sam Smith, Juan Smith, Jonas Smithouseus, Jenloff Smithous, Johannus Smithus, Givannie Smitzi, Stans Smith, Jean Smeets, Jabon Shimmit, Jon.
10 Smikton, Von Seef, John Finn, Dick Finn, John Den, Richard Den, John Ren, Richard Ren, Judas Ren, William Ren, Thad. Stephens, Charles Sumner, Windy Phillips, and Ben. Wade, defendants.

You are hereby required to appear in an action brought against you by the above-named plaintiffs in the district court of the third judicial district of the State of California, in and for the county of Santa Clara, and to answer the complaint filed therein, within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or, if served out of this county, but in this district, within twenty days; otherwise, within forty days; or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to recover judgment for the possession of five thousand one hundred and forty-one (5,141) acres of land, as part of rancho Las Animas, and for the sum of thirty-three thousand seven hundred and fifty ($33,750) dollars, rents and profits, and one thousand ($1,000) dollars damages, all of which, together with the description of said lands, more fully appear in the complaint filed in this cause.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiffs will apply to the court for the relief demanded therein.

11 Given under my hand and seal of the district court of the third judicial district of the State of California, in and for the county of Santa Clara, this 19th day of March, 1868.

[SEAL.] JOHN B. HEWSON, *Clerk*

Answer of George Anson.

[Title of court and cause.]

George Anson, one of the defendants in the above-entitled action, comes into this court, and for his separate answer to the complaint of plaintiffs denies each and every allegation of the said complaint, except as hereinafter admitted, and specifically and particularly denies that on or about the 5th day of January, A. D. 1865, or prior thereto, or at any other time, the plaintiffs or either of them were or yet are seized in fee-simple, or otherwise, or the owners of an undivided interest equal to three-fourths or of any other interest of the tract of land hereinafter described, and which is a part of the tract described in said plaintiffs' complaint, or that they or either of them is entitled to the possession of the whole or any part of the same; and he denies that he, on or
12 about the 5th day of January, A. D. 1865, or at any other time, entered upon said premises or on any part thereof, except as hereinafter stated, or ousted the plaintiffs therefrom, or that he has or does, except as hereinafter stated, withhold the possession of said premises from the said plaintiffs, or any part thereof, or that plaintiffs or either of them have any right to the possession thereof, or of any part thereof, or that they have sustained damage by reason of the alleged ouster in the said complaint set forth, or for any other reason, to the amount of one thousand dollars or any other sum. And this defendant denies that the rents and profits of any part of said premises sued for that this defendant ever occupied are of the value of fifteen thousand dollars, or any greater sum than four hundred dollars per annum, or that said defendant has received all or any part of the said sum for rents and profits of the said premises, or that this defendant has refused to pay said plaintiffs the said sum or any part thereof, or that said plaintiffs are entitled to receive from this defendant, as rents and profits of said premises, the said sum or any sum whatever.

And for a further and separate answer, this defendant says: That at the time of the commencement of this action, and before that time, to wit, on the 24th day of July, 1858, this defendant was and ever since has been and now is seized as owner in fee-simple and entitled
13 to the possession of the following-described parcel or lot of ground, being a part of the premises described in plaintiffs' complaint, and which is bounded and described as follows: Commencing on the eastern line of the Solis rancho, which line divides the said rancho from the Rancho de Las Animas, thirty-nine chains north from where the said easterly line of the Solis rancho crosses the township line, according to the United States Government survey, being township number eleven (11) south and range three (3) east, to the fence on the southern boundary of the settlers' claim, known as Burnapp's claim; thence due west seventy chains; thence due north forty chains; thence due east seventy-three chains and fifty links to the first-named Solis rancho line; thence southerly along and with the said line to the place of beginning forty chains, containing in all about two hundred and eighty-seven acres.

And this defendant avers that as to the land and premises described in said complaint, except that portion herein specifically described, this defendant was, at the time of the commencement of this action, and yet is, seized in fee-simple and the owner of an undivided interest therein equal to one three hundred and eighty-fourth part thereof, of which he has not at any time occupied or possessed more than ninety acres, as he might do.

14 Further answering, and for a counter-claim to the alleged cause of action for damages for the occupation of said premises, this defendant alleges that at the time of the commencement of this action he was holding, and for a long time prior thereto had held, the premises so described and occupied under color of title, in good faith, and adversely to the claim of said plaintiffs; and that while so holding said premises he made permanent improvements thereon, to wit, houses, fences, orchard, vineyard, dug wells, of the value of three thousand dollars, which said sum this defendant claims shall be deducted from the amount that may be proved against him on the trial of this action as damages or for rents and profits, and he asks judgment against the plaintiffs for the excess.

And for a further counter-claim to the plaintiffs' cause of action for damages and rents and profits, this defendant alleges that during the time he so held and occupied said premises so claimed by the said plaintiffs in their complaint, and as herein described, he paid delinquent taxes that were levied on said premises, and on the improvements thereon, to the amount of dollars, which sum this defendant claims shall be deducted from the rent or damages that may be proved against him on the trial of this action, together with interest thereon at the rate of five per cent. per month until such rent or damages accrued.

15 And the said defendant, further answering, says that the plaintiffs' right to recover any sum for the use and occupation of the premises so possessed and occupied by this defendant, as aforesaid, prior to the 19th day of March, A. D. 1865, is barred by the statute of limitations of the said State of California, and which statute is by this defendant plead in bar of the plaintiffs' right to recover damages or rents and profits against him prior to said period of time, because an action therefor did not accrue to plaintiffs within three years before the commencement of this action.

And for a further and separate defense this defendant avers that neither the plaintiffs nor either of them, nor their ancestors, predecessors, or grantors, were seized or possessed of that portion of the premises described in the said plaintiffs' complaint as occupied and possessed by this defendant, and herein particularly described and set forth, or any part thereof, within five years before the commencement of this action; and this defendant avers that he and those under whom he claims have had quiet, peaceable, and undisturbed possession of the premises herein described and every part thereof adversely to the plaintiffs, under color and written title, for more than five years next preceding the commencement of this action.

16 And for a further and separate defense this defendent alleges that the title under which he claims the premises herein described, and of which he is the owner, is derived from the Mexican government; that said title was finally confirmed to his grantors by the Government of the United States, through its legally constituted authorities, by the issuance of a patent by said Government, in due form, bearing date 18th day of January, 1859, to the said grantors of this defendant; that said final confirmation was made before the passage of the act entitled "An act to amend an act entitled An act defining the time for commencing civil actions, passed April twenty-second, eighteen hundred and fifty," and approved April 18th, 1863; that this defendant's grantors were, at the date of said final confirmation, in the peaceable and undisturbed possession of the tract of land herein described, and this defendant and his grantors so continued until the

commencement of this action, and he still is in possession thereof, claiming and holding, and is the owner in fee of the same under title derived from the said Mexican government, and under the said final confirmation as aforesaid; and this defendant avers that neither the plaintiffs, their ancestors, predecessors, or grantors were seized or possessed of the said tract of land, or any part thereof, at any time within five years after the date of the said final confirmation, or within five years before the commencement of this action, and he insists upon the same as a defense to this action.

17 Whereof this defendant prays judgment against said plaintiffs, and for his costs of suit.

THOMPSON CAMPBELL, AND
L. ARCHER,
Attorneys for Defendant.

Answer duly verified.

(Indorsed:) Filed May 7th, 1868. Jno. B. Hewson, clerk.

Stipulation as to answers.

[Title of court and cause.]

It is hereby stipulated and agreed that all of the defendants in said action who answered therein by L. Archer and Thompson Campbell filed answers in the same form and containing the same allegations as the answer of George Anson, excepting only that such defendants set out in his or her answer a description of the parcel of land occupied and claimed by him or her. The following are the defendants so answering, to wit: S. Riddle, D. C. Riddle, Thomas Roe, Robert M. Phelps, Wm. S. Phelps, Electa Ousley, John A. McCloskey, James Muir, Lawrence Hearny, Simry Haun, P. Francis Hoey, Wm. Hartshorn, Ledgard Fine, Spencer P. Fine, George Eastin, Oscar D. Dryden, Joseph
18 H. Duncan, Dixon S. Duncan, Adele Devereux, John Dowdy, Perry Dowdy, John Castello, Connelly Cochran, John Burchell, Orlando Bodfish, Wm. W. Beauchamp, Elish E. Brock, Hester D. Adams, W. Z. Angney, Keziah Campbell, Euclid N. McCutcheon, Maxie McCutcheon, J. Ousley, and Owen Dowdy.

And it is further agreed that the answers of said defendants need not be set out in the transcript on appeal to the Supreme Court; that the answer of George Anson shall be set out therein only to show the issues raised by all the answers therein.

S. O. HOUGHTON,
THORNTON & WILLIAMS,
Attorneys for Plaintiffs.
L. ARCHER,
Attorney for Defendants.

(Indorsed:) Filed December 22d, 1869. Jno. B. Hewson, clerk.

Judgment.

[Title of court and cause.]

Regular September term, A. D. 1868.

This cause came on regularly for trial, J. J. Williams and S. O. Hough-

ton appearing as counsel for the plaintiffs, and L. Archer, Thomp-
19 son Campbell, F. E. Spencer, and Moore, Laine & Silent for the defendants. A jury of twelve persons was regularly impaneled and sworn to try said cause, and witnesses on the part of plaintiffs and defendants were sworn and examined, when it was agreed by the counsel for the parties, in open court, that the jury should be discharged and the cause be tried by the court, sitting without a jury; and the evidence being closed and the argument of the counsel heard, the cause was submitted to the court for consideration and decision, and by the court taken under advisement; and, after due deliberation thereon, the court delivers its decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding, it is ordered, adjudged and decreed that the plaintiffs take nothing by their said suit herein, and that the defendants be adjudged to be the owners of the land sued for and described in the complaint herein, and that they have and recover of and from the plaintiffs, Henry Miller, Thomas Rea, and James P. Sargent, their costs and disbursements incurred in this action, amounting to the sum of forty-one dollars and five cents.

The following is a description of the property as described in the said complaint: A tract of land situated in the county of Santa Clara,
20 State of California, beginning at a redwood post at the S. W. point of the foot of "Lomitas de las Linares," on the line of the final official survey of the "Las Animas," marked "L. A. No. 11" and "S. No. 11," a witness-tree bears S. 36½° W., seven chains and ninety links distant, and another S. 64° E., nine chains and twenty-one links distant, and running thence with the true meridian, the variation of the magnetic needle being 15° 20′ east; thence S. 4½° W. one hundred and seventy-nine chains and twenty-five links to a redwood post, marked "S. No. 10," from which a clump of four sycamores bears S. 62° E., two hundred and fifty-eight links distant; thence west three hundred and thirty-seven chains seventy-seven links to a redwood stake, marked "S. No. 9," from which a witness-tree bears S. 60° W., eighty-five links distant, and another N. 27° W., thirty-three links distant, and also another S. 22° E., eight links distant; thence N. forty-six chains and twenty links to a redwood post, marked "S. No. 8," at corner to sections five, (5,) six, (6,) thirty-one, (31,) and thirty-two, (32,) on line between townships ten (10) and eleven (11) south, range three east; thence N. 52½° W. eighty-four chains and thirty links to a post on the line of the final official survey of the "Rancho Las Animas," and thence along the final survey of the Las Animas rancho to the point of beginning; containing about five thousand
21 one hundred and forty-one (5,141) acres of land, and being a part and parcel of the tract of land known as the "Rancho Las Animas."

Judgment rendered May 11th, 1869.

JNO. B. HEWSON, *Clerk.*

Duly certified.

Notice of motion for a new trial.

[Title of court and cause.]

To the above-named defendants and Messrs. Archer & Lovell, F. E. Spencer, and Moore, Laine & Silent, their attorneys:

You will please take notice that the plaintiffs in the above-entitled

cause will move the said court for a new trial thereof upon the grounds following, to wit:

First. The insufficiency of the evidence to justify the decision of the court, and that the said decision is against law.

Second. Errors in law occurring at the trial of said cause, and excepted to by the plaintiffs.

WILLIAMS & THORNTON,
Attorneys for Plaintiffs.

22 Service of a copy of the within and foregoing notice of intention to move for a new trial of said cause is this day acknowledged.

May 11th, 1869.

MOORE, LAINE & SILENT, AND
L. ARCHER,
Attorneys for Defendants.
FRS. E. SPENCER,
Attorney for Defendants represented by him.
WILLIAM M. LOVELL,
Attorney for Defendants.

(Indorsed:) Filed May 12th, 1869. John B. Hewson, clerk.

Order overruling motion for new trial.

[Title of court and cause.]

THURSDAY, *September 23d*, 1869.

Court met pursuant to adjournment. Present, Hon. S. B. McKee, judge, John B. Hewson, clerk, and John H. Adams, sheriff; when the following proceedings are had, to wit:

The motion filed herein for a new trial of this cause is now submitted to the court upon the statement filed herein; and the court, being sufficiently informed, denies the said motion; to which ruling of the court in denying the said motion for a new trial plaintiffs except.

S. B. McKEE, *District Judge.*

23 *Stipulation.*

[Title of court and cause.]

We hereby agree to submit the within motion for a new trial in said cause without argument.

WILLIAMS & THORNTON, AND
S. O. HOUGHTON,
Attorneys for Plaintiffs.
L. ARCHER,
For Defendants.

Statement on motion for a new trial.

[Title of court and cause.]

This cause came on to be tried on the day the same was set for trial on the calendar of said court for the September term thereof for the year A. D. 1868, to wit, on the 18th day of September, A. D. 1868, J.

J. Williams and S. O. Houghton appearing on behalf of the plaintiffs, and L. Archer, Thompson Campbell, F. E. Spencer, and Moore, Laine & Silent appearing for the defendants.

A trial by jury having been demanded by the defendants, a jury was impaneled and sworn, whereupon the following proceedings were had:

The said plaintiffs introduced as a witness Henry F. Lardner, who, having been duly sworn, testified that he was a deputy of the
24 clerk of the district court of the United States for the State of California.

The witness, at the request of counsel for plaintiffs, here produced the record of the proceedings of the board of United States land commissioners organized under the act of the Congress of the United States entitled "An act to ascertain and settle the private land-claims in the State of California," passed March 3d, 1851, in case numbered 136, the same being entitled José Maria Sanchez v. The United States, and being the claim presented for the rancho known as Las Animas, in Santa Clara County, State of California, and testified that said record was produced by him from the office of said clerk of said district court of the United States, who was the official custodian thereof.

The said plaintiff then read in evidence the said record, comprising the following documents, to wit:

The testimonio and expediente and accompanying diseño and decree of revalidation of the grant of the Rancho Las Animas, by José Figueroa, supreme political chief of Upper California, dated August 7th, 1835, together with the petition upon which said order was founded; a translation of all of which is hereto attached, together with a copy of the said diseño, and marked "I, Testimonio."

25 The said plaintiffs also read in evidence from said record the following documents, together with the indorsements thereon, the same being hereto attached, and numbered from 1 to 4, inclusive:

First. The petition of José Maria Sanchez to said board of commissioners, praying the confirmation to him of the grant of the Rancho Las Animas, situate in the county of Santa Clara, State of California.

Second. An order made by said board of commissioners reviving the said cause in the name of the heirs of said petitioner, José Maria Sanchez.

Third. The decree of said board confirming said claim.

Fourth. Notice of appeal from the decree of said board to the district court of the United States for the northern district of California.

Plaintiffs also read in evidence the following documents, with the indorsements thereon, the same being hereto attached, and numbered from 5 to 21, inclusive, to wit:

Fifth. Decree of said district court confirming said claim for Las Animas.

Sixth. Notice that no appeal would be prosecuted from said decree of said district court.

Seventh. Stipulation that no further appeal would be prosecuted in said cause.

Eighth. Decree of said district court granting leave to claimants to proceed upon the former decree of said court as under a final decree.

26 Ninth. Exceptions by claimant to survey of Rancho Las Animas, confirmed in said cause, made by the surveyor-general of the United States for the State of California.

Plaintiffs then read in evidence an order of said district court of the United States, which is in the words and figures following, (the same

being entered on the minutes of the proceedings of said cause, in which t is entitled :)

"At a stated term of the district court of the United States of America for the northern district of California, held at the city of San Francisco on Tuesday, the 12th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, present, the Hon. Ogden Hoffman, district judge.

"THE UNITED STATES } No. 136.
v.
JOSÉ MARIA SANCHEZ. }

"Order entered directing United States surveyor-general to return survey in this case."

To which defendants objected on the ground that it did not appear at whose instance the same was made, and that it did not appear to have been made on motion of any party in interest, and because the court had no jurisdiction to make said order; which objections were overruled by the court, to which ruling defendants excepted.

27 Plaintiffs here offered and read in evidence the plot of survey of the Rancho Las Animas made by Wallace, with the indorsements thereon, the same being indorsed, "Filed November 23d, 1859. W. H. Cheevers, clerk"—a copy of which plot is set out herein and marked, "Plot referred to as official survey in No. 17; order setting aside survey of Las Animas."

Also the following documents, to wit :

Tenth. Claimants' specifications of objections to survey.

Eleventh. Petition of J. L. N. Shepard and John H. Moore to intervene in the matter of the survey of the Rancho Las Animas.

Twelfth. Monition requiring parties interested in the survey of said rancho to intervene for the protection of their interests.

Thirteenth. Return of United States marshal for the State of California indorsed on said monition.

Fourteenth. Order on return of monition allowing time to intervenors to show right to intervene.

Fifteenth. Exceptions of intervenors to survey.

Sixteenth. Exceptions by the United States to survey.

Seventeenth. Order setting aside survey of Las Animas rancho, and directing a resurvey thereof.

Eighteenth. Decree of the district court of the United States approving resurvey of Las Animas rancho, together with plot of said survey.

28 Nineteenth. Order granting an appeal from the decree of said district court approving said survey to the circuit court of the United States.

Twentieth. Notice that appeal from the district court to the circuit court would be prosecuted.

Plaintiffs here proved that a transcript of the record of the proceedings had in the district court of the United States for the northern district of California, relative to the survey and location of the said Rancho Las Animas, including the evidence taken in said court relative to the location of said rancho, was filed in the circuit court of the United States for the State of California July 19th, 1865, upon the appeal to said last-mentioned court from the said district court of the United States.

Twenty-first. Decree of the circuit court of the United States affirming decree of the district court of the United States approving survey of Las Animas rancho.

It was here admitted by defendants that José Maria Sanchez died in the year 1853.

It was further admitted by the defendants that the plaintiffs, at the time this action was commenced, were the owners and yet continued to own an undivided three-fourths of all that certain tract of land lying
in the county of Santa Clara, State of California, known as
29 the Rancho Las Animas, by title derived from the original grantees and confirmees of said rancho.

The plaintiffs then introduced as a witness Quintin Ortega, who testified that he had known the Rancho Las Animas for about sixty years. Mariano Castro is the first one who ever lived on the rancho. He lived on the rancho when I first knew it. The rancho now known as Las Animas was formerly called Carneadero, and afterwards it was known as Las Animas. When I first knew that rancho Mariano Castro had on it cattle and horses, and he planted and sowed some part of it. Mariano Castro lived on that rancho until he died. I do not recollect in what year he died. My father lived on the adjoining rancho. My father died in 1829. Mariano Castro died several years before my father. I cannot say how many years before. I am seventy-eight years old. The claimant of Las Animas was Mariano Castro, and the claimant of Solis was Mariano Macario Castro, but both were called Mariano.

R. C. HOPKINS, a witness for plaintiffs, testified as follows:

I am keeper of the Spanish archives in the office of the surveyor-
general of the United States for the State of California, and I am
30 the custodian and have under my charge the original Spanish documents originally filed before the board of United States land commissioners to settle private land-claims in the State of California.

The witness, at the request of counsel for plaintiffs, here produced the original document given in evidence by the plaintiffs from the record of the said land commission, as is heretofore stated, termed "Testimonio," a translation of which is hereto attached, marked "I, Testimonio," and stated that it was the original document filed before said land commission in the claim for said Rancho Las Animas; that it was produced by him from the archives of the office of the said surveyor-general.

The plaintiffs then proved by the testimony of A. M. Pico the signatures of Figueroa and Francisco Negrete del Castillo, appearing on said document termed "Testimonio," to be their genuine signatures; that at the time said documents signed by them respectively bear date, Figueroa was gefe politico, or governor of Upper California, and that Negrete was his secretary; that Figueroa died in 1835 or 1836.

Said original documents were then read in evidence by plaintiffs, a translation thereof being hereto attached, marked "I, Testimonia."

It was here admitted that all of the defendants for whom
31 Messrs. Archer and Campbell appeared were in possession of portions of the land described in the complaint and in controversy in this action at the time this action was commenced.

GREEN HANNA, a witness for plaintiff', testified as follows:

I have known the tract of land described in the complaint since 1853. I know David Huber and William L. Hoover. The former is not in pos.

session of any part of the land in question. I do not know as to the latter. Charles M. Day, James Means, James Hoover, John Hoover, Francisco Deming, Thomas Gaines, Wm. Thornton, George W. Dale, Washington Evans, and John Norris were all in possession of portions of the land in controversy at the time this action was commenced. Orrin Dowdy, R. Campbell, Euclid N. McCutcheon, J. Ousley, Wm. N. Furlong, and Wm. Hanna were also in possession of the land when the suit was commenced.

C. BIERLOWSKI, a witness for plaintiff, testified as follows:

I am a civil engineer and surveyor by profession. I am now, and have been since 1854, a draftsman in the office of the surveyor-general of the United States for the State of California.

The plot of the final survey of the Rancho Las Animas, finally
32 approved by the circuit court of the United States, given in evidence by the said plaintiffs, a copy of the same being hereto attached, marked "18," was here shown the witness, who testified that he was familiar with the calls of the survey of the Rancho Las Animas, and of the natural objects referred to thereby; that he had plotted the surveys of the adjoining ranchos as well as that of Las Animas, and was acquainted with the topography of that part of the country; that the land described in the complaint was wholly within the said finally approved survey of Las Animas. The lines on the plot of the final survey of Las Animas, as delineated upon this plot, can be located with mathematical certainty on the ground. The Wallace survey, a plot of which was filed in the United States district court November 23d, 1859, was an actual survey of Las Animas, made on the ground, the field-notes of which are on file in the office of the surveyor-general. The witness, referring to the plot or map of the final survey of Las Animas, given in evidence by the plaintiffs, a copy of which is hereto attached, marked "18," stated that there was a scale on that map. It is drawn on a scale of eighty chains to an inch. The land in dispute in this action is wholly within the lines of the finally approved survey of Las Animas. I have
plotted the land in dispute in a copy of said plot with mathemati-
33 cal certainty. The field-notes of surveys made under the directions of the surveyor-general of the United States of confirmed California claims are never returned into the courts, which have to pass on such surveys, but are kept as records in the office of the surveyor-general. I can locate this plot (the map of the approved survey of Las Animas) on the ground with perfect certainty by the aid of the field-notes of the survey of said rancho, which are of record in the office of the surveyor-general. The north line could be protracted with perfect certainty on the ground. The plot of a survey made final is a location. It may not be a final survey. The lines of a survey may be protracted on a plot without an actual survey or measurement on the ground with perfect certainty, and measurements of such lines can be made on the ground with as great certainty, and the lines determined and located as though the measurements should be first made and plotted afterwards.

The witness produced a diagram, and testified that the same was made by himself from the plot and field-notes in the office of the surveyor-general aforesaid, and that the said diagram is correct, and represents correctly the land covered by the surveys of the Ranchos Las Animas and Solis, the line of overlap being shaded green, said plat being hereto attached and marked "Exhibit A. S." When the plot of a location

34 of a confirmed claim is made, they do not return with the plot the field-notes of the survey; they are kept as records in the office of the surveyor-general, and a table of courses and distances is usually put on the plot.

Upon cross-examination the witness stated: I could not locate the plot of the Animas on the ground without the field-notes, but with them I could do so; and witness also stated that the table of field-notes was not on the map or plot, and that a survey could not be made on the ground without them; also that a patent could not be obtained on that map; the Department would not issue a patent on such.

The plaintiffs here rested, and the defendants here offered and read in evidence the patent from the United States for the Rancho Solis, issued in pursuance of said decree confirming the same, the same being hereto attached, and marked "Solis patent."

It was here admitted that the defendants derive title to the several parcels of land occupied by them respectively within the calls of said Solis patent from the original claimants and confirmees of the Solis rancho.

W. Z. ANGNEY, a witness for defendants, testified as follows:

I know the land in question. George Hanson has occupied the
35 parcel of land described in his answer since 1858; has had it inclosed seven or eight years. I myself occupy the land described in my answer, and have so occupied it since 1858. I have had it inclosed since that time. Elisha Brock has been in possession of the premises described in his answer more than six years, and has had it inclosed about that time. John Burchell has had possession over five years. N. W. Beacham, Orlando Bodfish, and John Castello entered into possession of the parcels described in their respective answers January 1st, 1864. Adele Devereux, Perry Dowdy, John Dowdy, Joseph H. Duncan, Oscar Dryden, George Easton, Ledgard Fine, and Spencer P. Fine entered into possession of the several parcels described in their answers in March, 1862. Francis P. Haly, Wm. Hartshorn, Samuel Henry, Zimry Haun, John A. McCroskey, James Muir, entered into possession in 1862. Electa Ousley, Thomas Rowe, S. Riddle, and D. C. Riddle entered in 1861. Hester Adams and William Matthews entered in 1862.

The defendants entered under title derived from John H. Moore by purchase from and conveyance by him to them of the parcels of land described in their answers respectively, at the several times of their entries, as stated by witness Angney, and have held the same by cultivation and inclosure ever since.

36 JOHN A. BREWSTER, a witness for the defendants, testified that he was a civil engineer and surveyor; that he was a deputy and clerk in the office of the surveyor-general of the United States for the State of California. The plot of the final survey of Las Animas, marked No. "18," is shown the witness, and he said:

From this plot I could not locate the land for want of the field-notes of the survey. This map is compiled partly from the field-notes of surveys of adjoining ranches of record in the office of the surveyor-general and partly of surveys made of lands of this rancho here shown. I would not consider it a patent-map, nor a map from which to make out a patent. Field-notes are required in a patent. The plot shown me may be perfectly correct. It is not a map or plot of a survey. A survey is made by running lines on the ground. This is only a map or plot of a

location. One of the lines was never run on any survey. No patent could issue upon it. Surveys are always made on the ground, and the surveyor is governed by rules and instructions. The Wallace survey, the one returned to the district court, includes no part of the Solis rancho, but includes a part of the San Ysidro rancho.

Upon cross-examination the witness stated:

37 If I had the field-notes from the surveyor-general's office from which the plot is made, I could undoubtedly locate, on the ground, the lines shown upon that plot. The land in dispute in this case is within the lines of Las Animas, as shown on this plot. Where a tract of land is surrounded by ranchos, the lines of which have been actually surveyed, and field-notes of such surveys are in the surveyor-general's office; the tract so surrounded can be plotted with accuracy from such field-notes, the same as from a survey of that particular tract. Where a line is given by course and distance, such line can be protracted with certainty to meet or intersect another line shown upon a plot of survey, and run out on the ground according to the plot.

The defendants here closed.

And plaintiffs, in rebuttal, called H. F. Lardner, deputy clerk of the district court of the United States for California, who, at the request of plaintiffs' counsel, produced the record of the proceedings before the said board of United States land-commissioners in case six hundred and ninety, together with the proceedings had in the said district court of the United States in the case of said claim for Solis; the same being

38 the claim of Rufina Castro, widow, and the children and heirs of Mariano Castro, deceased, for the rancho Solis, in the county of Santa Clara, State of California, and stated that he produced the same from the office of the clerk of said district court, who was the official custodian thereof.

Plaintiffs then gave in evidence from said record of said board of commissioners the following documents, with the indorsements thereon, hereto attached, marked "22" and "23."

Twenty-second. The petition of Rufina Castro, widow of Mariano Castro, deceased, and his children, praying the confirmation to them of the rancho Solis.

Twenty-third. The decree of said board of commissioners confirming said claim.

To giving and reading of each of which, severally and altogether, defendants objected, upon the following grounds:

1. The same and each of them is irrelevant and immaterial.

2. A part of the records of the proceedings before the board of commissioners could not be given in evidence without offering the whole record.

Plaintiffs refused to offer or read the whole record, but only offered the parts above enumerated, selected from the record. The court overruled the objections, and admitted the said documents, and each of them, in evidence. To which ruling defendants at the time excepted. Whereupon defendants asked leave to read, and offered in evidence, the

39 balance of said record of proceedings in said case before said board, consisting of evidence of witnesses and divers documents given in evidence before said board in said case, which was objected to by plaintiffs. The objection was sustained by the court, to which defendants at the time excepted.

And from said record of said district court, plaintiffs read in evidence the following documents, hereto attached, marked "24" to "29," inclusive:

Twenty-fourth. Notice that appeal from the decree of said land-commissioners, confirming said claim for Solis, to the district court of the United States for the northern district of the State of California, would be prosecuted.

Twenty-fifth. Notice that said appeal would not be prosecuted.

Twenty-sixth. Decree of said district court affirming said decree of said board of commissioners.

Twenty-seventh. Notice that no further appeal would be prosecuted, and stipulation that claimants have leave to proceed under decree of confirmation as under final decree.

Twenty-eighth. Order of said district court that said claimants have leave to proceed as under a final decree.

Twenty-ninth. Copy of expediente, diseño, and accompanying documents contained in said record of said board of commissioners, in
40 said claim for Solis, together with the translation thereof contained in said record of said board of commissioners, said translation being hereto attached, and marked "II, Expediente Solis."

The said plaintiffs recalled R. C. Hopkins, keeper of the original Spanish archives in the office of the said surveyor general of the United States, who produced from said archives the original of said expediente, diseño, and accompanying documents for Solis, a copy of which was set out in said record of said board of commissioners, which copy was given in evidence as aforesaid by said plaintiffs, together with the translation thereof contained in said record, which translation is marked "29, II, Expediente Solis," and plaintiffs read said original expediente, diseño, and accompanying documents in evidence.

Witness then stated that the said translation of the document in said expediente of Solis, marked "III" herein, dated January 30th, 1834, and signed José Figueroa and Agustin V. Zamorano Srio, contained in said record of said board of land-commissioners read in evidence by plaintiffs as aforesaid, was a false and incorrect translation of the original document contained in said expediente, and that the following is a correct translation thereof, to wit:

41 (Indorsed:) Hopkins.

EXHIBIT B.

MONTEREY, *January 30th*, 1834.

Let the decree of the 21st of November last be carried out, notifying the party, as required by the same, that within fifteen days, counting from this date, he is required to prove that the land for which he petitions does not pertain to that of Las Animas. The Señor Don José Figueroa, brigadier-general, commandant general, inspector and superior political chief of Alta California, thus ordered, decreed and signed, which I attest.

JOSÉ FIGUEROA.
AGUSTIN V. ZAMORANO.

Witness further stated that the said translation of the document in said expediente of Solis, marked "IV" herein, and being dated the 8th day of August, 1835, and signed Castillo, secretary, contained in said record of said board of land-commissioners, read in evidence by plaintiffs as aforesaid, was a false and incorrect translation of the original document contained in said expediente, and that the following is a true and correct translation thereof, to wit:

42 (Indorsed:) Hopkins.

EXHIBIT A.

The time for making proof given by the decree of the 21st of November, 1833, and confirmed by another of the 30th of January, 1834, requiring the party interested to show, within the term of fifteen days, that the land for which he petitions does not belong to Las Animas, having expired, this expediente is considered as canceled: wherefore the señor political chief, on this 8th day of August, 1835, orders the same to be filed in the archives.

Witness further stated that the translation of the expediente given in evidence by the plaintiffs from said record of said land-commissioners, was substantially correct, excepting only said two documents herein, marked "III" and "IV."

Plaintiffs here read in evidence a translation of the note written on the map or diseño attached to said expediente for Solis, having first proved that the said translation was correct—said translation being as follows, to wit:

The petitioner asks for the land, indicated as one league of land, from the hills (lomas) of Las Linares as far as the Sierra of Santa Cruz; and another league from the mouth of the cañada, in the direction of
43 the wheat-sowing grounds, including the small tract of land on which are built the house and corrales.

No. 1.

"I."—TESTIMONIO.—RANCHO DE LAS ANIMAS, GRANTED UNDER THE NAME OF SITIO DE LA BREA, TO MARIANO DE CASTRO, 1802.—COUNTY OF SANTA CLARA.—JOSÉ MARIA SANCHEZ AND OTHERS, PRESENT CLAIMANTS.

Diseño del Rancho de Las Animas.

NOTE.—A copy of said diseño is attached to this transcript, marked as above.

(Here follows map, marked page 43.)

Testimonial.

To the superior political chief:

Maria Josefa Romero, widow of the departed Mariano Castro, in the most proper and legal manner, comes forward and represents:
44 That her deceased husband having taken possession of the tract called "Las Animas" in the year 1806, in virtue of a concession obtained from the administration, when the governor of this Territory was Sor. Aerillga; and whereas the title-deeds of said tract, by order of said governor, were ordered to be registered, therefore she has not at the present time the same, consequently she does not hold the credentials of the relative rights; therefore, she beseeches that your excellency will consider the foregoing, and order that the respective patent be given her to establish what is set forth, by which she will receive grace and justice.

Monterey, June 21st, 1833.

MARIA JOSEFA ROMERO.

MONTEREY, *June 24th*, 1833.

Let the expediente be searched for, as above requested, and at her expenses issue the testimonial which she prays for.

FIGUEROA.

To the political chief of Upper California:

The citizen Carlos Castro, attorney of Doña Josefa Romero, the widow of the citizen Mariano Castro, before the well-known justice of your honor, in the mode permitted to him, appears and says: That the tract of Las Animas having been granted to the said citizen Mariano Castro during the time of the Viceroy Iturrigaray, about the year 1801,
45 and the possession of which he took in the year 1809, the proofs of the same the same grantee held until a few years ago, when the ranch house that he built on said tract took fire, and unfortunately he lost everything therein, without being able to save anything at all; and, in consequence, to ashes were reduced the deeds that accredited the legitimate seisin of the aforesaid estate. After this event, said Castro applied for new instruments, the evidence of which must exist in the records of D. Joaquin Arrillaga's administration, in order to procure such important papers, but he never could obtain them, the reason of said failure being even now unknown; but a new application being indispensable, so that the widow (mandatoress) may hold the usual safeguards of legitimate ownership, (or fee,) therefore, inasmuch as her rights be constituted, her representatives entreat to have executed new documents, such as your honor believes sufficient to insure her the desired safeguards, in accordance with the expediente or papers existing in said archives. But in case the proofs obtained be not competent to grant this petition, then your memorialist prays that there be issued a new title in revalidation (renewal) of that concession, on account of the well-known fact of the time it has been possessed; and also, if it so please your honor, to order beforehand the informations deemed
46 proper and just. In this belief I duly transmit to your honor the plat which sets forth the tract of said (tract) place of Las Animas, which shows an extent of surface of four "sitios" for large cattle —a little more or less—adjoining with the rancho of San Francisco de las Llagas, as far as the Lomita (hills) de la Linares, with the rancho of San Isidro, with that of the Brea, belonging to San Juan Bautista, and the sierra, as is shown in the plot.

Therefore, I pray that your honor condescend to grant this petition, which will be an act of justice, avowing that this is not for malice, etc.

Monterey, June 20th, 1835.

CARLOS CASTRO.

MONTEREY, *June 26th*, 1835.

Let this petition be annexed to the preceding ones mentioned by the applicant; let the expediente, which he says serves as evidence of the concession of the tract now in possession, be looked for, and withal report, in order to resolve what be proper.

FIGUEROA.

Contents of all of Castro's papers.

On the 5th day of July, of 1802, Mariano Castro, who was in Mexico, presented to the viceroy petition praying for the tract of La Brea, which was referred to the royal tribunal of accounts, which tribunal

47 heard the report of the officer of the proper bureau, which was favorable. The tribunal transmitted it to the viceroy, who sent it to the procurator (fiscal) of the royal hacienda, (treasury,) at whose request, also favorable, it was decreed to send the expediente to the proper office of the government, in order to have issued the corresponding patent, communicating the resolution to the governor ad interim of the Californias. In pursuance of which the viceroy granted his permission to Mariano Castro, in order that he could go and establish himself and family on that tract called De la Brea, in which establishment no obstruction should be made under any pretext, for which he paid the fees imposed; and all is shown by paper No. 1.

Document No. 2 is a letter from Friar José Manuel de Martiarena, in which he informs that the tract of La Brea is required by the mission, dated August 1st, 1803.

Dated November 2d, 1803, follows another report, by Gabriel Moraga, numbered 3, favorable to the party in interest.

No. 4 is a dispatch returning a report given by a sergeant of D. José de la Guerra's company, who signs the same, and a letter from Friar José de la Martiarena, in which the latter says that the mission does not need the tract of La Brea, which paper is of the 3d of November, 1803.

48 No. 5 is a repreresentation from Mariano Castro, with date of the 3d of December, 1803, to the governor of Californias, in which he asks that possession of the tract of La Brea be given him, as ordered by the viceroy, Don Felix Verenguer de Marguina, and bears on the margin a favorable report from the commandant, of the same date. Then follows a decree from Sor. Arrillaga, dated January 7th, 1804, at the garrison of Loreto, in which it is ordered to be transmitted to the commandant of the garrison of Monterey, so that the latter could refer it, accompanied by the orders of the viceroy, to the ministers of San Juan Bautista, that they might set forth whatever they deemed proper.

On the 18th of February, 1804, the superior decree was obeyed, passing along with his titles the memorial to the ministers, as declared by the commandant of Monterey, D. José de la Guerra. Then follows on the same sheet the report of the fathers, in which they state that the mission needs the location in question, and concluded on another, dated the 2d of March, 1804.

No. 6 is a reply from Ignacio Vallejo, Dolores Pico, and the Sergeant Bravo, dated March 15th, 1804, in which it appears the mission needs the tract De la Brea.

No. 7 is an opinion [of] Marcelino Bravo, who says that the mission requires the tract of La Brea as far as La Posa above and to the Pajaro below, and dated on the 10th of April, 1804.

49 No. 8 is a dispatch from Macario Castro, accompanying the report demanded of him, which letter is marked "No 9," favorable to the parties in interest in the ranch of La Brea, dated 11th of April, 1804.

No. 10 is a report from Ignacio Vallejo, in which there appears that La Brea is needed, and its date is the 11th of April, 1804.

No. 11 is a letter bearing date of the 27th of May, 1804, from Friar José de Martiorena, in which he also informs that the mission needs the ranch.

No. 12 is a report from Ignacio Vallejo, dated on the 14th day of March, 1804, and it also sets forth the fact that the mission needs the ranch.

No. 13 is a letter from Friar Domingo de Iturrate, in which he informs adverse to Castro's petition; its date the 28th of March.

No. 14 is an answer to a dispatch which ordered Castro to seek for another location to establish his ranch, the result of a representation made to the viceroy in Mexico by the father superior of the College of St. Ferdinand, and in the answer he states that he has found no other tract, and that the mission never needed the same until it was solicited; its date the 30th of July, 1804.

No. 15 is a representation from Mariano Castro, of the 3d of July, 1808, in which he asks for the tract of the "Carneadero," to locate
50 there his ranch, and by a decree of Don José Maria Estudillo, of the 4th of the same month, it was referred to Don Ignacio Vallejo to inform therein, where he says that Castro does not prejudice the mission if he occupies from the Arroyo del Carneadero, northwardly. Then follows another decree, dated the 4th of the same month, to have the fathers of San Juan Bautista report, and they set forth that this location is prejudicial. Then follows one from Macario Castro, in which he says that it is in nowise a prejudice to the mission for the solicitant to locate on the Carneadero; and he says, in addition, that he can remain from La Posa to the north with other neighbors, as there is land sufficient. There follows another opinion from Juan Maria Ruiz, entirely similar to the preceding. Another follows, where Gabriel Moraga certifies and says, that he is of the opinion of the aforesaid Castro and Ruiz. Another decree from Estudillo follows, with date the 5th of September, 1808, to have the father of San Juan Bautista inform, who says: "That the tract which the solicitant, Mariano Castro, demands is a prejudice, as it supplies the necessities of his life." Contained in this document there *there* are other facts of the cattle existing, and the distances of points.

No. 16 are reports from friars Narciso, Duran, and Ramon Abeya,
51 in which they declare that the tract of the Carneadero cannot be granted to him, and certified to by Friar Felipe Arroyo de la Cuesta.

No. 17 is a letter from Friars Domingo Iturrate and Felipe Arroyo, de la Cuesta, of 22d of November, 1808, in which they oppose the intended crops to be made by the applicants for those places. This tallies with the originals, which I annex.

Monterey, July 30th, 1835.

FRANCISCO DEL CASTILLO.

NEGRETE, *Secretary.*

Decree of the political chief.

MONTEREY, *August 7th*, 1835.

In accordance with the petition of Carlos Castro, attorney for the widow Josefa Romera, as the representative of the will and estate of her departed husband, Mariano Castro, soliciting the revalidation (revalidacion) of the titles of fee to the ranch of Las Animas, which they possess in public notoriety further back than twenty years, in view of the evidence which this expediente affords, by which is accredited the right of said Mariano Castro to the tract of Las Animas, granted to him by the vice-royal government under the name of Sitios, called De la Brea, according to the patent of the 17th of August, 1802, let a testimonial be issued of this expediente for the protection of the parties. And
52 whereas the boundaries to which they must confine themselves (the parties in interest) are not expressly defined, those set forth in the plot presented by the attorney, Carlos Castro, shall in future be

known as such, leaving uninjured the right of any third party who may consider himself aggrieved by this proceeding.

SOR. DON JOSÉ FIGUEROA,
General of Brigade, Commandant-General, Inspector, and Superior Political Chief of Upper California.

Thus he commanded, decreed, and signed, to which I certify.
JOSÉ FIGUEROA.
FRANCISCO DEL CASTILLO.

NEGRETE, *Secretary.*

Don Felix de Berenguer de Marguina, lieutenant-general of the royal armada, viceroy, governor, and captain-general of the provinces of New Spain, president of her royal audience, superintendent-general of the royal treasury, quicksilver-mines, and department of tobacco, conservative judge of this president of the royal junta, and sub delegate-general of the mails in the same kingdom, etc.

There was presented to this superior government an instrument of the following tenor:

YOUR EXCELLENCY: I, Mariano Castro, a native of the mines
53 of Boyarenca, in the province of Sonora, with the greatest respect and submission before your excellency, represents: That having served eleven years as a soldier in the garrison company at Monterey, in the peninsula of the Californias, he obtained, four years ago, his furlough, for the object of assisting his parents, Joaquin and Martina Boteller, both of the first founders of that New California. With a desire to better my lot, and procure some relief for my aged parents, I came to this city to see a married sister, whose circumstances are such that she cannot succor us. I learned here the tidings of the decease of my father. It is imperative on me to depart forthwith for said province, for the purpose of taking charge of the chattels of husbandry, large and small, and horse cattle that remain, for my mother's subsistence. At the same I must mind my own and my wife's support, with five children, so that for this property and these cares I need the patronage of your excellency to permit me to transport my mother, myself, my family, and our property from the region of Buenavista, where we were as burdens to a brother-in-law of mine, to the tract of La Brea, a spot distant three or four leagues from any mission or pueblo, by which not only is no injury done, but the reverse—it will be useful as a stopping place and accommodation for mail-rider, pack-trains, and
others, travelers who traverse these spots, lacking all kinds of
54 supplies, in the same manner as various other ranches intervening between the garrison at San Diego to the one at Santa Barbara, in the same province. All of which not only contribute to the peopling of that province, in which this superior government is so greatly interested, but is in accordance with the projected scheme of this government, with the assent of the royal tribunal of accounts, and the sor. fiscal of the royal treasury, to construct inns, to serve as hospitable quarters for the troops and pilgrims.

Wherefore, I beseech your excellency to deem proper to permit the settlement of myself, my mother, (a founder of those wilds,) and two children, with our goods, on the tract aforesaid, De la Brea, in the jurisdiction of Monterey, in Californias, by which fresh settlement, improvements, and benefits are held out for the advance of those new re-

gions; an act of kindness and grace which the petitioner awaits at the hands of your excellency, for which he will ever be grateful.

Mexico, July 5th, 1802.

MARIANO DE CASTRO.

In view of the above, I demanded a report from the royal tribunal of accounts, which, having heard the contrado of the bureau, they reported what is inserted.

Señores Contradores Mayores:

55 To the undersigned, Mariano Castro's request appears reasonable for the superior permission to proceed to Californias to locate with his family on the tract known as La Brea, in the jurisdiction of Monterey; besides, it not being just to deprive him of the enjoyment of his farming property, bequeathed to him by the decease of his father, his location in the spot referred to will be serviceable as a stopping place for passengers; and, even more deserving of consideration, is the addition of one family to the peninsula, which may in time grow very populous, procuring by these means, among others, the important object of population in Californias. I find no objection to bar the solicited grace, but it occurs to me to mention to your honor that if the viceroy thinks proper to grant the family favor, it will be advisable for his excellency to order that the governor of the peninsula take steps to supervise the conduct of Mariano de Castro and of his family, to prevent whatever outrages might attend his isolation in the said region.

Bureau (Mesa) for Californians of the contraduria mayor of the royal tribunal and auditory of accounts of Mexico, July 23d, 1802.

GOMEZ.

To His Excellency:

This tribunal, in the place of finding any objection against your excellency permitting Mariano de Castro to proceed to this peninsula of Californias, and locate on the tract called De la Brea, con-
56 sider it praiseworthy for divers reasons set forth already by the contador of the respective bureau, in his annexed statement. This tribunal subscribes to the same, more particularly the latter part, which tends to prevent all evil results, although your excellency's usual foresight will determine what be most suitable.

Royal tribunal and auditory of the contraduria mayor of accounts, July 30th, 1802.

HERRERA.
MONTERDE.
LACUNZA.

In this condition I ordered the expediente to be referred to the fiscal of the royal treasury, who stated what is contained in his reply, the tenor of which and that of the pursuant decree which I drew is what is shown.

To the Excellency:

EXCT. SIR: The fiscal of the royal hacienda says: That he is of the same opinion as the royal tribunal of accounts; that far from being any objection, it will be politic to grant to Mariano de Castro the superior permission prayed for to settle on tract known as La Brea, in the jurisdiction of Monterey.

He, as himself states, served eleven years in the company at the
57 garrison; it is four years since he obtained his discharge. With
a view of aiding his aged parents, who were of the first founders
of New California, he came to this capital with the expectation that a
married sister would relieve him, who was not in circumstances so to do.
He here received the news of his father's death. With this in view, and
for the purpose of taking charge of the goods, cattle, and horses remain-
ing for his support, he wishes to unite the same and proceed with the
property, his mother, wife, and five children, and two brothers, to the
spot referred to. The settlements of families in New California has ever
been one of the principal aims of this superior government, with which
view towns have been fostered; and to obtain this, different measures
have been employed—transporting families with the title of settlers at
the cost of the roal treasury, and in the same way artisans of all kinds,
to give an impulse to industry. Nor is it an objection, the distance be-
tween La Brea and the mission and pueblo, as, in addition to its being
short, the house which Mariano Castro will build will be serviceable as
an accommodation to expresses, mule-trains, and travelers to and fro;
consequently, it is by all means prudent to grant his entreaty under the
restrictions proposed by the royal tribunal, that the governor be watch-
ful of the conduct of this family. Your excellency will deem
58 proper to grant upon these terms your high permission to Mariano
Castro, and acquainting him with such for his intelligence, and
giving him the proper passport, that the government of the peninsula
be advised, in order to place no impediment, but, on the contrary, to
afford him the aid and means required for the success of his settlement,
reporting the result to your excellency.

Mexico, August 7th, 1802.

ALVA.

MEXICO, *August 12th*, 1802.

As advised by the fiscal of the royal treasury and the passport given to
the petitioner, let this expediente be referred to the proper office of the
government to which it belongs, that then the respective patent be given
him, reporting this resolution to the governor ad interim of Californias.

[Marked with a flourish.]

In pursuance thereof I have thought proper to make these presents,
in virtue of which I give my high permission to Mariano de Castro to
enable him to proceed and settle with his family on the tract entitled De
la Brea, jurisdiction of Monterey, upon the terms set forth by the royal
tribunal of accounts and the fiscal of the royal treasury in their annexed
statements, in which settlement he shall not, under any pretext,
59 be in anywise impeded, the governor of the peninsula to be watch-
ful and jealous of the said Castro and his family.

Mexico, August 17th, 1802.

MARGUINA.

By order of his excellency.

JOSÉ IGNACIO NEGREIRA Y SORIA.

For my colleague. Fees and costs: $16.80.

His excellency grants his high permission to Mariana de Castro that
he may be able to proceed and settle with his family on the tract called
"La Brea," jurisdiction of Monterey, upon the terms set forth by the

royal tribunal of accounts and the fiscal of the royal hacienda, in their annexed communications.

(Entered.)

Number two.

(The grace of Christ.) In the name of Jesus.

To the Governor, Don José Joaquin de Arrillaga, my highly esteemed master and countryman:

This mission needs greatly the tract of La Brea, distant two and a half leagues, a little more or less from it, and make the same plea for the land of the Auzaimas, removed not quite three leagues, as they are the only places where its stock can be maintained, for in the other directions there is no pasture on the north, as far as the plain of the
60 king's ranch; on the southeast, as far as the sierra; on the east southeast, as far as a defile, rather wide, where the grass is very poor; from the east to the northeast the Sierra Madre runs; only from the northeast to northwest is the pasture good; and towards the west, the ravine of Pajaro to the playa, (bank,) although the fodder is good, the defile is narrow.

Wherefore, I entreat you, if any person should happen to solicit said tracts, not to accede. In the tract of La Brea, we have already constructed the inclosures to drive our small cattle and a part of the larger there, which we think of doing this month. A house is now finished for the mayordomo, (whom I expect will be Claudio Alvirez,) and an apartment to accommodate guests. The building is twenty varas square, with four ample rooms. This mission now contains nine hundred and seventy-five souls, and consequently requires some cattle, besides the many Indians near at hand. The mission can count upon one thousand horned cattle, with some given by the fathers of Santa Clara and San Francisco missions, and five thousand head of sheep, which will not suffice even to half clothe its people. I believe it will need as many as ten thousand sheep to clothe them after the fashion of the country, and of the other six thousand in order to afford some meat. God preserve you many years in His holy grace.

Mission of San Juan Bautista, August 1st, 1803.

61 Excellent sir, your countryman and chaplain, etc., kisses your hand.

FRIAR MANUEL MARTIARENA.

COMONDU, *October 5th*, 1803.

Let the Second Lieutenant Don José de Noriega inform and return this letter.

ARRILLAGA.

Number Three.

A statement that I give to my commandant, Don José de la Guerra y Noriega, as regards the tracts and spots which the mission of San Juan Bautista hold for the grazing of its large and small cattle, as also its houses, which I execute in compliance of an order made to me verbally by said commandant so to do. It is as follows: From my slight knowledge of the tracts, as acquired in the pursuit of whites, runaways, Indians, and wild malefactors, as also in driving the public drove of mares, I set forth that the mission of San Juan has the plain known as Tequesquite,

with the tract of the Ausaimas, which was spacious and abundant with grass and water. At the creek of the Pajaro above, about four leagues, there is another tract, known as the Pasines, which is equally abundant in pasture and water and similar. At the same stream below, as far as the pass to go Santa Cruz, there is pasture and divers springs of
62 water, and two or three lakes, which are unfailing the year round, whose yield I consider sufficient for their respective locations to herd a considerable quantity of horned cattle, horses, and sheep, which the said mission may have. This all is that I can say relative to the orders given, and which I subscribe at Monterey, November 2d, 1803.

GABRIEL MORAGA.

Number Four.

Along with the report given me by a sergeant of my company, I return the letter of the Reverend Father Friar José Manuel de Martiorena, and according to the report I am of opinion that the mission ot San Juan has little need of the tract of La Brea, but you will determine what you think best.

God preserve you many years.

Monterey, *December 3d*, 1803.

JOSÉ DE LA GUERRA.

To the governor, Don José Joaqain de Arrillaga.

Number Five.

SOR. GOVERNOR: I, Mariano Castro, a resident of this jurisdiction, before you, with due respect, represent that I have solicited from the commandant of this garrison the possession of the tract of La Brea, as commandant by his excellency the Viceroy Don Feliz Verenguer
63 de Marguina, in a decree of the 17th of August, (1802,) last year, contained in the accompanying expediente, and he has replied that he cannot do so without an express order from you. La Brea is a tract whose nearest village is the mission of San Juan, distant along the main road from three or four leagues; and inasmuch as I do not ask for more expanse than that from the creek of the Pajaro to the lomita called La Linares, I believe there will be no objection to give it to me, attending to the fact that no injury whatever follows; to the contrary, a benefit to the passers by. Wherefore I ask and pray that you will give orders to said commandant that he deliver the possession which I solicit, which favor I anticipate from your goodness.

Monterey, *December 3d*, 1803.

MARIANO CASTRO.

To the governor:

All herein contained is true, and I find reason why the possession which he prays for should not be given him, except the decision of the governor, who possesses more knowledge.

Monterey, December 3d, 1803.

JOSÉ DE LA GUERRA.

ROYAL GARRISON,
Loreto, January 7th, 1804.

Let it be returned to the commandant of the garrison at Mon-
64 terey, who will transmit it, with the resolution of his excellency,

to the reverend fathers of the mission of San Juan Bautista, as it adjoins, with a request and charge that they represent the injuries which might befall the inhabitants of the mission of their charge in the settlement of the neighbor Mariana Castro upon the tract of La Brea, and advise me of the result.

ARRILLAGA.

MONTEREY, 18*th Feb'y*, 1804.

In obedience to the foregoing superior decree, I refer this memorial and titles to the reverend fathers, missionaries of San Juan Bautista, to have them represent what they deem suitable, which, after being fulfilled, they will return.

JOSÉ DE LA GUERRA.

DEAR SIR: At your superior command, we have received from the second lieutenant commanding the royal garrison at Monterey the proceedings and patents which Mariano Castro executed and obtained in Mexico to procure a settlement upon the tract called La Brea. Sor. governor, we were already resigned to witness with all possible patience the miseries and calamities which would inevitably befall those neophytes in the settlement of Mariano Castro upon the tract referred to. We were resolved to mingle our tears with theirs, and to exhort them to suffer in humility and silence. But now that we are permitted
65 to set forth in their name the injuries and injustice that must accrue to the mission in the settlement of La Brea ranch, we do so, confining our statements to that which is most reasonable and correct.

The mission of San Juan Bautista, sir, is situated in a valley that from east to west contains, perhaps, one and a half leagues in length, and from the septentrion (north) to the south, about one-quarter of a league in width. On the east, after passing the hills, you find a ("cul de sac") rinconada; between them and there, Sierra Madre, (Mother Mountain,) not fit for cattle on account of barrenness, of no water, and depredation of wild Indians, whom we have felt now and then, (although seldom,) when they have visited this spot; on the west is a chain of hills, followed by a very rugged country, until you come out upon the plains of the river Pajaro, where the horses belonging to the king, our sovereign, are constantly feeding; on the south there is a craggy mountain, so steep and uninviting that it may serve solely as a home for wild beasts. On the slope of this mountain this mission is built. Towards the north is a range of low hills, which run in a plain extending to said tract of La Brea, where the sheep ranch of this mission is located, and here is where a major part of its horned cattle and horses roam, as it is the only
66 place suitable for the purpose, as to water and pasture. The distance between the ranch of La Brea and the mission, measured accurately, does not reach ten thousand nine hundred varas. If Mariano Castro were more a lover of veracity than his personal benefit, he would not have represented that the distance of that tract from the mission was from three to four leagues, nor would so readily, by false representations, have obtained the concession of his settlement. It is not, sir, our design to injure him in any manner, but at times the truth is most imperatively called for. The mission now contains one thousand and forty-three neophytes, twenty-five cat'chumen, and a numerous collection of wild Indians, whom, with God's help, we hope to convert. From this it appears that a large part of the plain itself has had to be taken and devoted to cultivation, in order to raise crops sufficient to support them. As the land

is not very productive, it is indispensable to obtain more land. If to Mariano Castro were granted the limits of his ranch from the side of the mission as far as the Pajaro Creek, as he entreats in his petition, the space left to the mission, measuring from the slope of the mountain whereon it is built, is a little more than a league, and if from this we take what has been stated to raise produce for one thousand and forty-three souls, and even more than we expect
67 christianize, where are the pasturage for the cattle? This impoverished mission, sir, has no other means of clothing its neophytes than the fleece of its flocks; and although it only to give them the miserable dress, consisting of a blanket, apron, and abdomen cover for the males, a blanket, apron, and skirt to females, once a year, as is the custom in the missions of San Francisco, Santa Clara, Santa Cruz, and all others that can afford the same, then, in proportion to the Indians, we require ten thousand head.

It is true this mission does not yet possess the necessary stock, and can do no more. But is it reasonable to limit its resources in such a manner that it can never possess the means, and that poverty be forever its portion? We even lack oxen sufficient to till its lands, to transport the grain and lumber; a number of horses adequate to drive the cattle and to thrash (tramp out) its grain; a stock of horned cattle to allow twenty beeves to be killed weekly for them, and let them a half allowance of meat, as customary in all missions that keep an adequate stock of cattle, in order to save them from a vow of fasting like the institutions of some of the stricter orders. In addition to what is set forth, the proper locality of the mission's supplies of lumber is near by the tract of La Brea, whence the supply for the erection of buildings now under way has been obtained, and whence the mission ex-
68 pects to procure a supply for those fabrics to be constructed for dwellings and offices required for its neophytes. This is the place from whence a trip can be made in one day, as other places are six or seven leagues distant, devoting two and a half days for each journey, or force the Indians to carry it on their shoulders out from places so chapparal-like and crags so precipitous that their lives would be in imminent danger. It is worth mentioning that to expedite the journeys for lumber the Indians had to clear away a large space, make a road for the carts to travel, fill some seven ditches, construct bridges, and other labors, and other exertions which have been executed, the result of ingenuity and industry on their part. If Mariana Castro had paid attention to all damages and grievances accruing to these poor neophytes, not alone would not have dared to represent that from his settlement no injury whatever followed in the neighboring mission, but also would have stated everything which we have alleged, and consequently he had not surreptitiously and by false representations obtained concession of said tract, nor would have permitted himself to say that when he gets the possession, and the mission wishes to cut timber, not only has his consent to be obtained, but likewise they will have to pay him its value. If, in granting to Mariano Castro the con-
69 cession of his ranch, a due compliance had been given to the provisions of law 15, book 4, title 12, of the Recopilacion de Indias, we are certain that he had failed. He presented no witnesses, which the law commands, "That even when they be presented, in order to prevent all frauds, the fiscales of the royal audiences shall watch and inquire with due diligence the quality and give possession of the same, that they be not granted to the injury of the Indians."

Mariano Castro alleges that the tract of La Brea is from three to four

leagues removed from the mission of San Juan Bautista. Whereas, measuring, as already stated, from base to base, it is not quite two and a quarter leagues; and, notwithstanding that he believed the space to be too much intervening between this mission and La Brea, he says in the memorial that he presents to you that he does not solicit any greater extent than that existing from the Pajaro Creek as far as the small hill called La Linares. According to this the mission's lands will be a league and odd varas on that side, and the extent of Mariano Castro's some four leagues. So, sir, fo' 1,043 souls, not including such as we expect to christianize, a tract of a little more than a league is enough, and for a private family a space of some four leagues of domain is a moderate allowance. If to every number of Indians belonging to this mis-
70 sion to equal or double the persons of Castro's family about four leagues of land were granted, the confines would be vastly spacious. But no; these poor Indians ask no lands but such as they indispensably need in order to get lumber to build their habitations and offices; to keep sheep, which will afford a covering for their skin; to herd their horned cattle, and to raise crops. To obtain a subsistence, these spots are indispensable for their subsistence. Can it be possible that they will not be permitted this? God forbid that other nations may ever have a foundation whereon to establish the calumnies they forge and vomit against our country. The wise, just, and pious laws of our Catholic sovereigns shall perpetually check not only the Scottish Ravetron, and the French Bainal, but the calumnies of ancients and moderns.

They all breathe relief, aid, and protection to the Indians, more especially as regards the granting of lands to them; and in the laws 5th, 7th, and 9th, of book 4, title 12, of the Recopilacion de Indians, and in law 18 of the same book and title, it is expressly provided: "That the sales, cultivation, and appointment of lands be made so as to allot the Indians a surplus of those belonging to them, more especially when in clans; and that the water, irrigating streams, and lands, where they have made ditches or other improvements, and rendered fruitful by their industry, be reserved in preference, and in no case can they
71 be sold or alienated." These poor natives ask for no surplus, but for those they absolutely need, and none other than such as they by their labor have improved. Our sovereign king, in law 6th, book 4th, title 5, expresses and commands that any person who goes and at his expense founds a village, which at least must contain thirty inhabitants, with buildings and chattels, a church, and decorations as set forth in the same, fulfilling these duties, the land to be bestowed on him is four leagues square, (en cuadro,) with the absolute conditi n that it be removed such distance that it will injure no one, but still less the Indians.

Now, Mariano Castro prays for four leagues in length, without defining the width, to the detriment of the Indians. As claims for this, he sets forth that he has served the king, our sovereign, for eleven years, and that his parents were among the first founders of the province. Even were all this true, still it cannot be denied that they do not hold good against the expenses and labor required at the hands of a farmer, (hacendista;) and if we touch upon the fact that the four leagues square to be granted must be at least five leagues distant from any city, village, or settlement, how then, sir, can about four leagues in extent be granted to said Castro, removed but a little more than a league from this mission? But, inasmuch as all his pleas are not true, how much less
72 reason is there to grant his petition? It is true that Mariano Castro served the king during eleven years, but clearly his fathers

were not of the settlers in this province. It, sir, was founded and established when, as a soldier, his father arrived, and some time afterwards he was discharged and became a resident of the Puebla de San José, whence he proceeded to the Buenavista ranch, and there settled along with his son-in-law. Neither is it worth while to heed or notice the utility which he promises in settlement, providing the requisite accommodation and shelter to mail riders and travelers, inasmuch as they obtain the same benefit from the sheep ranch located there by the mission, when in addition to the corrals and dwellings of the neophytes and shepherd, is a building of adobe, sufficiently ample [for] the mayordomo to reside and accommodate mail riders and pilgrims, which has been done when the same was called for. Moreover, we wish to state the willingness and desire of the Indians at and near the region of La Brea to be converted and assembled in a village since the mission laid out a ranch, aware that their lands are incorporated with the mission. Wisely do our Catholic monarchs provide in law 9, book 6, title 3:

"That the Indians will, with greater willingness and readiness, reduce themselves to villages, if they be not deprived of their lands
73 in the places which they leave, that no injury result in this respect, and they shall hold them as formerly, in order to cultivate and try to improve the same."

And in law 14 of the same book and title his majesty decrees that when a settlement of Indians is to be located and established, it must be effected, even though it be detrimental to persons settled upon the tract selected; that lands, waters, and forests be designated and given to the Indians, although for this object it be necessary to take property of Spaniards. How, then, in view of the law so express and imperative, can it be permitted, in order to establish a Spanish family, that the lands, waters, and woods are to be taken from the Indians, when they are required for their support? It is true that his majesty, in the same law, grants to the aggrieved parties an appeal before the supreme council of the Indies, but at the time he provides that such Spaniards who have borne these losses, in order to donate to Indians, shall obtain other lands for indemnity where they will not encroach. To conclude, sir, we are a body of poor friars, reared in the simplicity of cloisters, and as such we know not the intricacies of jurisprudence nor the force of laws. In our holy retirement the tumult of courts never is heard, forensic talent never displayed, for its occupants live in the most peaceable harmony.
74 We make this defense only in fulfillment of your command, and at a future day we might be accused of criminal neglect, for posterity would remark that those brothers had charge of those poor neophytes; they had no other voice or mode whereby to plead their rights nor represent their wrongs. How, then, did they permit this settlement? Why did they not protest? Why were they silent? These priests did not discharge the trust which the king reposed in their guardianship. God preserve your life for many years.

Mission of San Juan Bautista, March 2d, 1804.

B. L. M. de V. (I kiss your hands.)

FRIAR JOSÉ MANUEL DE MARTIORENA.
FRIAR DOMINGO DE ITURRATE.

To the governor, Don José Joaquin de Arrillaga.

Number Six.

I, Ignacio Vallejo, corporal of the company at the royal garrison of

Monterey, in obedience to the official dispatch given me by my sergeant, D. Gabriel Moraga, dated March 10th of the current year, the original order being given by our second lieutenant and commandant, Don José de la Guerra, to said sergeant the date of the latter, 3d of the same month and year, which instructed that myself, Corporal Dolores Pico, and the retired sergeant, Marcelino Bravo, should together report, with the fear of God, truly and impartially, whether or not the
75 lands of the mission of San Juan be sufficient to support properly its neophytes, if they be extensive enough to feed its cattle and horses, and if the Indians there can live in a decent manner; to which we reply, one and all, that in reality we do not know the precise bounds of the mission's possessions, but supposing them to be all the plain in front, encircled with the hills surrounding this flat land. If such is true, and from this is to be taken the pasturing region or space between the mission and tract of La Brea, distant two leagues one thousand and thirty varas, then they are not sufficient to properly maintain the mission's Indians, nor to feed the adequate number of cattle, for to allow to one thousand and odd souls, which the mission contains, already christianized, and more to become so, a customary weekly ration of meat, a stock of cattle is requisite of from five to six thousand head. Then to clothe them—for males an apron, blanket, and belly-cloth, and for females an apron, blanket, and skirt—they must have from nine to ten thousand sheep; they must likewise have two thousand head of mares, colts, and mules for threshing grain, and to supply horses for other purposes belonging to the mission, the mules for the trains, and also six yokes of oxen to make the necessary crop, the land for which latter, before anything else, must be selected on said flat. Such is what we
76 truthfully state, and avow that we have seen, perceived, and studied, according to our belief in God, our conscience, and good faith, complying with our superior's orders, leaving an open field for others of more capacity and intelligence than ourselves. Note: That we measured, although with difficulty, the distance between the foundations of the mission and the base of the house built on the tract of La Brea; we followed all the turns and windings of the old highway, and found that there *is* two leagues one thousand and eight hundred varas.

This we sign and certify to at the quarters in San Juan Bautista, March 15th, 1804.

IGNACIO VALLEJO.
DOLORES PICO.

At the request of the retired sergeant, Marcelino Bravo.
MANUEL RODRIGUEZ.

Number Seven.

I, Marcelino Bravo, say: That under a verbal order from the Second Lieutenant D. José Noriega, I proceeded to the mission of San Juan, so that, along with the Corporal Vallejo and the invalid sergeant, Macario de Castro, a reconnoissance might be made of the mission of San Juan lands. When I arrived, Sergeant Macario told me that the object was to look for places for the smaller cattle (sheep) of the mission; and look-
77 ing at a spring of water among the hills, between the hills and Natividad, my opinion is that this spot is not suitable for a cattle ranch, from the fact of it being very difficult of access; besides, during the sultriness of the summer season, it becomes dry. There is a lake on the road between the mission and the village, and my opinion is that a

cattle ranch cannot be made there, because I myself know that this lake dries up every year. We examined still further on the said road, at a distance of from four to five leagues, more or less, from the mission, to find ranches for said cattle. Here, I think, will serve—that is, if they will not trouble the public band of mares, which is probable; there are numbers of them here—as a spot for a ranch. Likewise was named the valley of Teguesquite, (Potash,) opposite to La Brea, in the direction of the hills or the rancheria of the Ausaimas. It is my opinion that this whole valley, as far as the lagunes, is suitable for herds of large cattle and bands of mares. Such is my opinion, and that the large cattle feed on La Brea above the Posa, and below as far as Pajaro, inviting other referees who may know better.

April 10th, 1804.

MARCELINO BRAVO.

Number Eight.

Sor. Lieutenant Don José de la Guerra.

My Dear Sir: I herewith transmit the report you request,
78 which I could from my own room have given, and even make the record of the mission of San Juan. Besides that, you sent me men who did nothing but follow and contend with me that the tract of La Brea was needed by the mission, as they had been informed it is so. Their incongruous minds could with difficulty agree. Now, to finish, you are aware that the opinions of men equal themselves in number. Here goes mine, which I believe so correct, that I could swear to it. My report is hereto annexed.

On account of the onerous duties of my situation I cannot see you, but nevertheless look around and see in what else this collection of bones can be useful to you. In pursuance of a paper shown to me by Dolores Mesa, I sent my delegate to set your son at liberty. Your letters came to hand at Las Llagas, at the pueblo. I will see if there is anything to answer. Therefore, kinsman, adieu. I am sick of the business.

MARIANO DE CASTRO.

Post Scriptum, (P. D.) Mind that it will not do to make much of my report, inasmuch as my surname is Castro. I wish it had been alone sufficient to exempt me.

[A flourish.]

Number Nine.

At the order of Don José Antonio de la Guerra, commandant of the garrison at Monterey, I went from this pueblo of San José to the
79 mission of San Juan Bautista, to meet Sergeant Brevet José Bravo and the Corporal Ignacia Vallejo, to reconnoiter with them all the lands of that mission's. We sallied forth on the 10th of the month of April to examine the side we deemed most suitable for a starting point, which we found to answer the following description: Three-fourths of the country surrounding the mission, for the distance of one and a half leagues, is good land, with plenty *and* water, fit for the subsistence of its oxen, tame horses, milch cows, and sheep, of actual use, and including the sowing lands possessing moisture and facilities of irrigation for the mares and rodeo cattle, from the mission as far as the rancheria of the Ausaimas, where intervening there is a low

range of hills with a heavy coat of grass, and a valley of perhaps two leagues in width, and running southwest about from seven to nine leagues in length, supplied with water in various places, suitable for sheep ranches, (small cattle;) but in particular there are three tracts, to wit: one above Natividad, which may be, more or less, about three leagues from the mission; another on the road that goes to the village, and is called El Jurican, on the banks of the Pajaro River, distant about three leagues or more; another is situate in front of the tract of La Brea, in the direction of the mission and across the Pajaro
80 stream, which creek possesses in different places watering spots as far downwards as where the highway to Monterey intersects the one to Branciforte. The tract of La Brea is likewise good for herding small cattle. The mission requires it, for although it holds three suitable tracts, it will have four for that time when the number of cattle shall increase so as to demand a division into herds or flocks. This knowledge I have acquired from experience and observing practical results; but at the same time I call attention to the fact that La Brea has an objection—the river, which in severe winters is difficult to ford; and besides, it seems that the channel of the stream is undergoing a change, as if to divide the mission's possessions from those of other settlements located on the other side, without the mission needing from thence anything but lumber. Nearly all of what I refer to has been seen by the two persons accompanying me; they stated, to', that they had reported and would furthermore report verbally to my commandant. My investigations, obedient to the orders of my commandant, are herein contained, and I retire to my other duties.

Rancho de la Brea, April 11th, 1804.

MACARIO DE CASTRO. [A flourish.]

Number ten.

I, Ignacio Vallejo, a corporal of the company stationed at the
81 royal garrison at Monterey, set forth, that pursuant to a verbal order received from my commandant, Don José de la Guerra, to examine all the lands of the mission of San Juan Bautista, along with the two retired sergeants, Macario de Castro and Marcelino Bravo, and meeting with whom at said mission, we proceeded to fulfill said order, and which had been given to all three.

As a commencement, said Macario asked me if my commandant had given me instructions, to which I replied that he had not. He then informed me and Bravo that the object of this task was to select places for small cattle; that, although he had seen them, it was requisite that we should also, to enable us to give our opinion along with his as to whether they were good or not, and that he would show the same to us, to all of which I listened attentively, and visited all the tracts, and saw the pasture and water pointed out by him, although I had divers times viewed them before. I nevertheless saw and examined all of them again. The first, a marsh in the midst of the hills intervening between the mission and La Natividad, did not appear to me suitable, on account of the roughness of the hills, and that the marsh becomes dry in dry seasons. He also called my attention to a lake to be seen from the road from the mission to the village of Branciforte; nor did this ap-
82 pear to me to be fit, inasmuch as it dries up nearly every year.

We followed this road, and at about five leagues he showed me the flats and country existing upon the banks of the Pajaro River. Here is to be found grass and the water of the stream, but these flats

are occupied by the mares belonging to the King; thence we proceeded to La Brea, whence he pointed out the flat or plain called by us Del Tequesquite (of potash.) This place is extensive, but the pasture is poor, as also the places for watering, and these are only to be found at the Ausaimas Creek, distant perhaps six leagues from the mission. These views were stated to Castro, who differed in each; and, seeing that we could not agree, he here remained, and I proceeded to examine all of the valley as far as the rancheria of the Paguines, in all of which mares can be raised, although about August and September the water fails, and they must drive the herds to water, which is from three to four leagues distant from the mission.

The foregoing is the result of my observations and examinings, in fulfillment of command given to me.

Stationed at the mission of San Juan Bautista, April 11th, 1804.

IGNACIO VALLEJO. [A flourish.]

83 Number eleven.

The grace of Christ.

Sor. Don José Joaquin de Arrillaga, my esteemed master and countryman:

On the 2d of the current month, at half past ten o'clock at night, (they could not be completed sooner,) we transmitted to the second lieutenant at Monterey the papers which through his hands you sent to us with the view that we should reply to them, and he informs us that they arrived late, and that this mail he would forward the same to you. On the 13th of this month Corporals Vallejo and Pico, and the retired Sergeant Bravo, arrived here, commissioned by said officer to measure the distance from the base of this mission to the stream at La Brea, and on the 15th they run the line which Mariano de Castro guided through all the windings and labyrinths of the public roads, and according to the statements of soldiers belonging to this post, the distance falls far short of two leagues and a half; on the day following they measured in a straighter course, and I think with a result less still, from the fact that we have measured. These commissioners arrived without the cornet deeming us deserving of an information. I would have been glad if Don Ignacio Ortega, Luis Romero, or others acquainted with the
84 need that missions have of pasture lands for their cattle, but in particular for sheep, should have come. In addition to what is above stated, they examined the pastures and waters surrounding the mission. Could this reconnoissance have been made last year, I had been pleased. In the month of August and September they might witness, out of the few water spots possessed by the mission, some of them (as I have seen) dry, and many tracts pastureless. In what may be advanced in this communication, I shall not attempt to claim any greater right than that the mission itself possesses to the tract of La Brea, as much from the contiguity as from the fact that many neophytes are there. It is more my design to give you an accurate statement of what transpired.

God keep you many years in His divine grace. Mission of San Juan Bautista, March 7th, 1804. (B. L. M. V.) Your dutiful chaplain kisses your hands.

FRIAR JOSÉ MANUEL DE MARTIARENA.

[A flourish.]

Number twelve.

I, Ignacio Vallejo, a corporal of the company at the royal garrison in Monterey, pursuant to the official notice received at the hands of my sergeant, Don Gabriel Moraga, its date is the 20th of March instant, the original having been given to the sergeant by our second lieutenant and
85 commandant, Don José de la Guerra, the date of the latter 3d of the month and year, instructing him to arrange that myself, Corporal Dolores Pico, and the retired sergeant, Marcelino Bravo, should together report, with the fear of God, truly and impartially, whether or not the lands of the mission of San Juan be sufficient to properly support its neophytes, if it be extensive enough to feed its cattle and horses, and if the Indians there can live in a decent manner; to which we reply, one and all, in reality we do not know the precise bounds of the mission's possessions, but supposing to be all the plain in front, encircled with the hills surrounding this flat land, and this supposition be true, and from this is to be taken the pasturing region or space between the mission and tract of La Brea, distant two leagues, (one thousand thirty varas,) then they are not sufficient to properly maintain the mission's Indians, nor to feed adequate number of cattle; for to allow to the thousand and odd souls which the mission contains already Christianized, and more to become so, a customary weekly allowance of meat, a stock of cattle is requisite of from five to six thousand head; then to clothe them—for males, an apron, blanket, and belly-cloth; for females, an apron, blanket, and skirt—they must have from nine to ten thousand sheep. They must likewise have two thousand head of mares, colts, and mules, for threshing grain and to supply horses
86 for other purposes belonging to the mission, the mules for the trains, and also one hundred yokes of oxen to make the necessary crops, the land for which latter, before anything else, must be selected on said flat. Such is what we truthfully state and avow to have seen, examined, and studied according to our belief in God, our conscience, and good faith, complying with our superior orders, and leaving the field open for others of more capacity and intelligence then ourselves.

Signed at the mission of San Juan March 14th, 1804.

IGNACIO VALLEJO.

NOTE.—We measured likewise the distance from the mission to the Brea, and found two leagues one thousand and seven hundred varas. [A flourish.]

Number thirteen.

The grace of Christ.

MISSION OF SAN JUAN BAUTISTA,
March 28th, 1804.

Señor Don JOSÉ JOAQUIN DE ARRILLAGA:

MY DEAR SIR: I received your favor, in which you counsel me to be patient. Patience is useful and requisite, but a wish will not give it to us, as we would desire. We received the papers of Mariano Castro, which we digested as soon as possible, on the 2d instant. In what we advance you will perceive the grounds why the mission objects to the settlements of Mariano de Castro and all others who covet the tract.
87 A few days ago came (without giving us the least intimation) three commissioners to this place—Corporal Ignacio Vallejo, and

Dolores Pico, and Sergeant Marcelino Bravo—with an order, which in
nothing purports to be your disposition, to examine and measure the
mission's lands, as also the distance intervening between here and La
Brea—Mariano Castro attending them. The first thing they executed
was the measurement—so well performed by Castro that he kept them
two days measuring along the old road, with all its windings. The
mission had to provide them with a line, Indians, and other requisites.
(The first day six went, the next day ten.) Señor governor, patience is
necessary, and time is precious. Just now we are very busy discharg-
ing our duties, inasmuch as it is now Lent—many people, and we two to
perform the task. There are many to confess, and many who are in a
fair way of instruction. We had to discontinue these labors, not alone
during the time the commissioners were occupied in their task, but for
many days afterwards, until, in order to not lose his patience, the priest,
my colleague, went to Santa Cruz, that one of their fathers should join
us. The latter resumed what we had begun, and I attended to so many
orders, so much formality, and all of so little value. I had written to
the commandant a private epistle that it was not the truth what Castro
stated, that the distance was no more than two and a quarter
88 leagues by the road Castro mentioned. This I wrote him to keep
him from supporting falsehoods, because I measured the same
very carefully, along with the two hired persons, which service, without
doubt, will be paid by the mission, if you order so. The sor. lieutenant
thinks that great benefits follow to us by frustrating the settlement of
ranches, and that the priests are those who realize the profits and prod-
ucts of the missions; and to attain our ends that we are willing to lie
right and left. This thought, with others, lead' us to understand how
much we are misrepresented. Patience, indeed, is requisite longer to
bear this, but the entire matter is for your consideration, and you have
known us for many years. I transmit for your information a statement
which, as a reward for our patience, was left with us by the commis-
sioners, and I have a copy, signed by the three, that I send to the father
president, with a number of statements given us by those who possess
particular knowledge, not only relative to this mission, but the result of
long experience in husbandry. Among them is Vallejo's, whom we in-
quired more than three years ago about various tracts which the mission
could select for a sheep-ranch, and he invariably mentioned La Brea;
likewise the person in charge of this picket, Don Ignacio Ortega, who
has for four years been occupied here in this avocation; with
89 the employés of this mission in former periods, and others, who
have practically examined everything.

If when this is stated they are not satisfied, God bless them, and do
they as they wish. We do our duty by stating and picturing griev-
ances that God, the King, and the natives suffer. If, withal, the pref-
erence who has the boldness to benefit one acting in indifferent faith
be mightier, let him attain his object, and it will haunt him beyond a
doubt.

Sor. governor, let us look at another matter about which you write:
about the carts, horses, and Indians that the mission furnished to the
garrison of Monterey, under an entreating order from the two com-
mandants of that station. All that we have to say is, that if we can
escape controversies the mission shall lose all her dues. We are weary
of disputing and of writing. Let Don Raimundo Carillo allege what-
ever he pleases, the debt is just—a witness that Don Fernando, whom
you have with you, and I am of the opinion that he or Estudillo wrote
the order. If Don Raimundo denies the account, we yet preserve the

letter, which says he cannot arrange as to the payment; that it is the governor's province, to whom he communicates, that he may determine who it is to be charged to, &c. If he denies it not, and still desires a quarrel, then it is all false. May God pardon and call him not to an account.

90 Now, I am persuaded that you know all, and we will be left in peace. We do not desire controversies, nor to be vexed with official papers. In order to obtain an amicable arrangement, and without knowing nor understanding the affairs of Castro, we beseeched him to permit the mission to be in peace, quiet, and tranquillity; and with inexpressible haughtiness and unparalleled rudeness he responded, "That the governor himself could not wrest from him that which the viceroy had granted to him from justifiable motives." The padre guardian of San Fernando writes us that everything is in our favor at the city of Mexico, (Vireyuato.) We flatter ourselves that you have done much in our favor. God grant you the health which your most humble servant prays. Your pastor (Q. B. L. M.) kisses your hands.

FRIAR DOMINGO DE ILLURATE. [A flourish.]

NOTA BENA.—The father, my colleague, is at Santa Clara assisting the priests of that mission in the confessions of their Indians and the villagers, and he informs by mail that he has written to you. Have you the extraordinary patience in the name of that is holy to submit this plague of letters.

Number fourteen.

By your official communication of the 22d instant I was in-
91 formed of the superior orders of his excellency the viceroy, forwarded by the governor on the 28th of May last, that I must select another tract as an equivalent for La Brea, (which had been granted to me by his excellency,) inasmuch as the reverend father guardian of the College of San Fernando, in the name of the father ministers of San Juan Bautista, had prayed for "to have that concession annulled, on the account of injuries resulting to that mission, which uses the tract for breeding of large and small cattle, and because the mission has buildings erected thereon." As they are not named, those injuries that would follow to said mission if the grant accorded to me should be consummated, I cannot answer such with that strictness requisite; but I must maintain that La Brea neither now nor at any future day, although the mission were possessed of innumerable herds of large cattle and countless flock' of sheep, would be needed, for—as set forth in the reports ordered by yourself, and would appear in no matter how many reports, provided they were given by impartial judges, for they could but state what I set forth in order to obtain the grant—the mission possesses at every point of the compass the necessary facilities, even a surplus, for raising crops and breeding all kind of cattle, without having the remotest need of the tract in question. The buildings that the reverend father guardian alleges are constructed, under the
92 statements, no doubt, of the father ministers, you know what they are, as you must have seen them; they consist of one room of adobes, with a tule roof, some twelve or fourteen varas, with an apology for a kitchen made by perpendicular poles. These were commenced as soon as they knew I had obtained from his excellency the concession for that tract. I had been upon the land before they were finished, and had demanded from you the possession; then was it when they drove there

the sheep, to obtain by this movement a ground for objection and prevent my location.

In virtue of excellent viceroy's mandate, that another tract should be given to me for settlement, where, if I could not enjoy the conveniences afforded by La Brea, I might obtain my sustenances and relief; besides, well aware from the feelings of the fathers that they will not acquiesce, even when my settlement creates no injury, in order to obey and become free, as I am poor, burdened with family, with all my goods loose in the open country, and suffering greatly from beasts and Indians in the delay of my settlement, I proceeded and examined all the spots within this region of country, and I have failed to find one other, even at five leagues distance from the main road. As far as I am acquainted, from my many years' residence in this jurisdiction, there are no
93 tracts what are not claimed, pueblo, village, or mission; for which reason I solicited from the first the tract in question, which, in addition to its situation on the main road, was exempt from any ownership, until now the fathers desire it without being in need of the same. I entreat that you will make known my statements to the superior government, that it may determine what be most just, inasmuch as its rectitude and goodness accord to me the privilege of setting them forth. I will pursue, as soon as I am advised of the superior dictation, without heeding the obstacles that the fathers may create for the purpose of obstructing my settlement. This I reply to your letter. God protect you many years.

Monterey, July 30th, 1804.

MARIANO CASTRO. [A flourish.]

Number fifteen.

To the Sor. Commandant of the Presidio of Monterey:

Mariano Castro, a resident of this jurisdiction, under your command, with due humility and respect appears and solicits the tract of the Carneadero whereon to establish his cattle-ranch. This tract is, more or less, distant about four leagues from the mission of San Juan Bautista. You will accord the same if he be entitled to the favor.

Monterey, July 3d, 1808. Q. B. L. S. M.

MARIANO CASTRO.

MONTEREY, 4*th July*, 1808.

94 The reverend fathers of the mission of San Juan Bautista are requested to state, in the name of their neophytes, what the latter may have on the tract of land petitioned by Mariano.

ESTUDILLO.

MONTEREY, *July* 4*th*, 1808.

Let Sergeant Don Ignacio Vallejo inform, from the acquaintance he has of the lands solicited by Castro, and render his opinion as to whether or not they will be a loss or injury to the mission of San Juan Bautista.

ESTUDILLO.

MONTEREY, *July* 4*th*, 1808.

Obedient to the orders antecedent, I reply that, as far as my slight knowledge can be used, Mariano Castro does not injure the mission of San Juan Bautista by locating his cattle from the Arroyo del Carneadero northward; neither his settlement, nor that of other two or three

who might so desire, would result in injury, for the tract is very extensive.

IGNACIO VALLEJO.

MISSION OF SAN JUAN BAUTISTA, *July 7th*, 1808.

Viewing that a great part of the cattle belonging to this mission is feeding on the Carneadero, the location of Mariano Castro with his cattle upon that tract results in injury to the mission. This is all that we have to communicate.

FRIAR DOMINGO AURRATA.

95 PUEBLO DE SAN JOSÉ,
August 10th, 1808.

In accordance with the instructions of the commandant of Monterey, and of the second lieutenant, Don Gabriel Morago, I report the following: The ranch which Mariano Castro solicits results not in injury to the mission of San Juan Bautista, not only from the Carneadero, but even from La Posa to the north, and two or three families, it is my opinion, could subsist, each with five hundred head of cattle, upon this tract.

MARCARIO CASTRO.

At the request of the second lieutenant, Don Gabriel Moraga, I, Juan Maria Ruiz, say that I am of the precise opinion of the retired Sergeant Marcario Castro, and from which I have nothing to add nor to subtract; and whereas I cannot sign my name, I have requested the retired Corporal Rafael Villaricencio so to do for me.

Pueblo de San José, August 11th, 1808.

At the instance of Juan Maria Ruiz.

RAFAEL VILLARICENCIO.

PUEBLO DE SAN JOSÉ,
August 13th, 1808.

In view of the instructions given me by the lieutenant commandant of Monterey, Don José Maria Estudillo, per dispatch of the 4th of this month, requesting my opinion in the premises, and for me to
96 choose other two or three referees to send in their opinions—all of which has been executed—my own opinion, as far as my knowledge extends, is similar, to a fraction; that from the Carneadero Creek in a northerly direction there is no fit place for a habitation, owing to the lack of water, while toward the hills there is a spot suitable. All of which I affirm, date above written.

GABRIEL MORAGA.

MONTEREY, *September 5th*, 1808.

The reverend friar, Father Domingo de Iturrate, minister of the mission of San Juan Bautista, will please set forth anew what he deem proper on the part of the neophytes under his charge, in view of Castro's petition and reports procured, returning the expediente in order to determine what may be proper.

ESTUDILLO.

MISSION OF SAN JUAN BAUTISTA,
September 20th, 1808.

In view of the antecedent reports, we, the undersigned, fathers minis-

ters, have resolved to appoint referees on the part of our neophytes, and their decisions is that the tract which the memorialist Mariano Castro demands is a loss, inasmuch as it affords the necessaries of their life. We certify hereto.

FRIAR DOMINGO DE ITURRATE.
FRIAR FELIPE ARROYO DE LOS CUESTA.

97 Number sixteen.

The Reverend Fathers Friars Ramon Abeya, Jose Viadez, and Narciso Duran:

In virtue of the orders sent to us, we hereby transmit the same to your reverences; give their opinions relative to the locations solicited by these claimants and to the prejudice of our neophytes. When you come to the festival of the elevation of the holy cross, you will please all three visit this mission, to take notice, examine, and with sincerity state your views, which will be a favor rendered to the lowest of your brothers. Q. B. L. S. M.

FRIAR DOMINGO DE ITURRATE.
FRIAR FELIPE ARROYO DE LA CUESTA.

At the mission of San Juan Bautista, September 8th, 1808.

To the reverend fathers of the mission of San Juan Bautista:

Pursuant to the preceding entreaty, I went and examined, along with the Fathers Ramon Abeya and Narciso Duran, tract Carneadero and vicinity. Besides, I saw that mission's sheep-ranch, La Brea and neighborhood, and, with a full knowledge in the premises, I state and affirm that the mission needs and has needed not only the Posa, but even to the Arroyo del Carneadero, and, in time, when the cattle shall have been multiplied and the pasture grown scarce, they may have to
98 drive the cattle to feed on the other side of the Arroyo del Carneadero, and which will not fail to happen.

It is clear that it is the duty of your reverences (in the name of your neophytes) to object to Mariano Castro's settlement, for it would result to the mission's injury. As to the Rodeito, (branding-place,) I am not acquainted with its precises whereabouts, but, from what Don Ignacio Ortega says in his memorial to the governor respecting it, we infer that this also will be productive of harm and detriment, and if not now it will be at a future day, admitting that the neophytes of that mission hold the fee and possession, and the King (whom God preserve) commands that the Indians shall not be deprived of their lands, especially of those that they require. I must counsel your reverences that you examine well the matter before you relinquish this tract.

May our Lord preserve you many years.

Mission of Santa Clara, September 30th, 1808.

FRIAR JOSÉ VIADEZ.
FRIAR NARCISO DURAN.

MISSION OF SAN JOSÉ, *October* 31*st*, 1808.

To Fathers Domingo Iturrate and Felipe Arroyo de la Cuesto, ministers at San Juan Bautista:

In answer to your reverences' communication, dated September
99 8th, in which you desire me to examine and report my opinion as to the tracts therein mentioned [by] Mariano de Castro, who solicits from the governor a ranch of four leagues at the Carneadero and its environs, I have so examined, and having well weighed and consid-

ered different objections, I say that if your reverences do not use every expedient in your power to prevent its consummation, you do not discharge your duty to the neophytes of that mission.

The mission of San Juan Bautista requires ten thousand head of sheep in order to clothe its neophytes. These flocks cannot feed at La Brea the whole of the year; they must be removed for the greater part of the year, and very likely to the very tract which the petitioner solicits, for there will be the watering-place, although river Ebro should cross this tract. For the purpose supporting the number—ten thousand—that whole plain is needed. So if a ranch be there granted, your reverences can begin to think of some more distant location where to order the neophytes (burdened with many infirmities) to feed the sheep a major part of the pear. No one can deny that sheep require an extensive tract—First, because the country is poorly watered, and the grass springs up only in the spring or a little before; second, because they tread down a good deal, so that after feeding for three or four years, nature ceases to act on the land, for it hardens and many roots are
100 destroyed. As an evidence of this fact, let some disinterested person examine the tract called San Francisquito, upon both sides of the creek, for the distance of leagues, as far as the sierra and beach, and he will find that barrenness prevails. Out of three tracts for grazing, two are entirely naked. I have learned that the rams belonging to the mission of Santa Clara are at this place during no season of the year, and the ewes from the 11th of August are in the mission, and very likely until the middle of November, and even from this latter date until the grass sprouts forth they are nearly famished.

It is alleged that at San Francisquito there is a great number of large cattle. I, in answer, say that when those of the missions of San Juan multiply, there will not be a few at the Carneadero. At the present time that mission possesses but a small number, but the Carneadero is very near. View all the villages and missions of this province, and you will find that to-day, at an equal distance, the land is very bare. Besides, ranches commence with a limited number of head, generally, but in a few years, no matter how much they are neglected, it is impossible to count them. Experience has taught me this.

On the lands of this mission of our patron saint, Francis, there are two ranches, owning many head, doing serious damages to the
101 cavalry of the royal service and to the cattle of the mission. What will it come to if they raise mares, sheep, and swine? We would be overrun. To this can be added that to-day one locates, tomorrow produces another friend or relative, and what perhaps was only bestowed in the light of a permission, or as a depot, is afterwards claimed as theirs; and perchance when the proprietor visits the spot which by natural laws is his own, they even state so to him. It seems to me that even to a person of mild and velvety temper an answer of this kind would make the blood effervesce.

Thereon my opinion is, in granting a ranch at the Carneadero, Posa, or that vicinity, a grievous injury would follow to the mission of San Juan Bautista, for it requires the selection of another tract.

Touching the entreaty for a ranch at the tract known as the Rodeito—Ignacio Ortega, its solicitants—I am totally unacquainted with the locality, and I cannot report concerning. God guard your reverences many years.

Mission of our patron, Saint Francis, October 28th, 1808.

FRIAR RAMON ABEYA.

A true copy.

FRIAR FLORENCIO YBANEZ.

MISSION OF ST. CARLOS, *November 5th*, 1808.

102 I, the undersigned, do certify that the foregoing are true and faithful copies taken from the original reports now filed and registered in the mission of San Juan Bautista.

In faith whereof I have signed my name in the mission of San Carlos, date ut supra.

FRIAR FELIPE ARROYO DE LA CUESTA.

Number seventeen.

To Don José Joaquin Arrillaga, Governor:

SIR: We have received an answer to the order dated 15th of this month, the first dated 18th, and after perusing its contents, we say that we protest against the petitioners sowing their crops on those tracts they solicit, for if this be accorded the erection of farm, with houses, stables, granaries, etc., will most assuredly ensue. We represent that all of this is fruitful of injury to the mission and its neophytes, and cannot consent even to the crops. This we transmit for your information and government. God protect your life for many years.

Mission of San Juan Bautista, Nov. 22d, 1808.

FRIAR DOMINGO DE ITURRATE.
FRIAR FELIPE ARROYO DE LA CUESTA.

To the Governor [a flourish] of New California.

Decree of the political chief.

MONTEREY, *August 7th*, 1835.

In accordance with the petition of Carlos Castro, attorney for
103 the widow Josefa Romero, as the representative of the will and estate of her departed husband, Mariano Castro, soliciting the revalidation of the titles of fee to the ranch of Las Animas, which they possess in public notoriety further back than twenty years; in view of the evidence which this expediente affords, by which is accredited the right of said Mariano Castro to the tract of Las Animas, granted to him by the vice-royal government under the name of tract of land called De la Brea, according to the patent of the 17th of August, 1802, let a testimonial be issued of this expediente for the protections of the parties; and whereas the boundaries are not expressly defined to which they must confine themselves, (the parties in interest,) those set forth in the plat presented by Carlos Castro, the attorney, shall in future be known as such, leaving uninjured the right of any third party who may consider himself aggrieved by this proceeding.

SOR. DON JOSÉ FIGUEROA,
General of Brigade, Commandant-General, Inspector, and Superior Political Chief of Upper California.

Thus he commanded, decreed, and signed, to which I certify.

FRANCISCO DEL CASTILLO NEGRETE,
Secretary.

(Here follows a certified catalogue of omissions and corrections, a made in the original one in the Spanish language.—TRANSLATOR.)

104 The foregoing compares to the letter with the originals in the expediente preserved in the archives, at the office of the secretary

of goverement; and, in compliance with the order of the civil chief, and for the purposes ordained in his last decree, herein inserted, this faithful copy is taken, authenticated on twenty-one and a half sheets of stamp-paper of the fourth seal, and one sheet of the first seal, which embraces the whole, whose pages bear each a flourish.

In affirmation and faith whereof, I sign the same, under the supervision of the civil chief, Don José Figueroa, at the capital of Monterey of Upper California.

August 22d, 1835.

FRANCISCO DEL CASTILLO NEGRETE,
Secretary.

Supervised:

FIGUEROA.

Fees: Forty-four dollars and thirty-seven cents.

I certify the foregoing to be a true and correct translation from the authenticated Spanish copy on file in this office in case No. 161.

GEO. FISHER, *Sec't'y.*

MONTEREY, *Agto. 7 de* 1835.

De conformidad á la solicitud del ciudadano Carlos Castro, apoderado de la viuda Josefa Romero como representante de la testamentaria de su finado esposo, Mariano Castro, pretendiendo la revalidacion de las titulos de propriedad del Rancho de las Animas, que posean
105 de publica notoriedad mas ha de veinte años, en vista de las constancias que muestra este espediente, por el qual esta acreditada el derecho del espresado Castro, el parage de Las Animas, que se le concedio por el govierno virreinal, vajo el nombre de Sitio y amado de La Brea, segun despacho de 17 de Agosto de 1802, livrese testimonio de este espediente para resguarda de las partes y respecto á que no estan espresamente designados los linderos á que deven sujetarse los interesados se reconoseran en lo subscuro los demarcados en el diseño presentado por el apoderado Carlos Castro, dejando á salvo el derecho de tercero que se considere agraciados de esta instancia. El Sor. Don José Figueroa, general de brigada, commandante general, ynspector y gefe superior politico de la Alta California. Aso lo mandó, decretó, y firmo, de que doi fé.

JOSÉ FIGUEROA.
FRANCISCO DEL CASTILLO NEGRETE.

No. 1.

Petition of José Maria Sanchez.

To the hon. the board of commissioners to ascertain and settle the private land claims in the State of California:

The petition of José Maria Sanchez submits the papers hereinafter mentioned, and represents that on the 17th day of August, 1802,
106 Felis Berenguer de Marguina, viceroy, governor, etc., of New Spain, in the exercise of powers in him vested, and by virtue of the laws then and there in force, granted to Mariano Castro a tract of land known as La Brea.

That said Mariano Castro was prevented from effecting an entry upon said tract of land under the grant aforesaid, and that on or about the 28th day of November, A. D. 1808, said Castro was ordered by the government to select and establish himself, and accordingly did select and establish himself, upon a certain tract of land called El Car-

neadero, or Las Animas, granted to said Castro, on or about said date last mentioned, in compensation and in lieu of the aforesaid tract of land, La Brea; said tract of Las Animas situate in the county of Santa Clara, State of California, the boundaries and descriptions whereof, with each and all the allegations above set forth, are more fully set forth and shown in the respective expediente, (a copy of which is herewith filed, marked "Exhibit A.")

That the grant of said tract of Las Animas, obtained and acquired as aforesaid, and by virtue of the rights vested in said Castro, under the said decree and grant of the 17th of August, 1802, was to said grantee duly confirmed by a certain decree of Venegas, viceroy of New Spain; said decree last aforesaid under date of on or about the 1st day of January, 1811, a copy whereof exists in the archives now under the charge of the surveyor-general.

107 That on the 7th day of August, 1835, José Figueroa, governor, political chief, etc., of Upper California, in the exercise of due powers conferred upon him by law, decreed and commanded a revalidation (revalidacion) of the titles to and an adjudication of said tract of land granted as aforesaid, to wit, the tract of Las Animas granted by the vice-royal government, under the name of Sitio, and called De la Brea, in favor and in accordance with the petition of Carlos Castro, attorney for the widow of Josefa Romero, the representative of the will and estate of her departed husband, the said Mariano Castro, and which said allegations each and all are now fully set forth in the respective expediente aforesaid.

That translation of said expediente (from the Spanish to the English language) is herewith filed, marked "Exhibit B."

That on or about the first day of January, 1829, the said Mariano Castro died, and left a widow, the said Josefa Romero, and three sons, to wit, Joaquin Castro, Felipe Castro, and José Castro, and a daughter, to wit, Carmen Castro.

That the said Mariano Castro left a will, (valid and in conformity to law and proven,) by which said will the said testator duly devised all and singular his estate and chattels to the said Maria Josefa Romero aforesaid.

108 That at the decease of said Mariano Castro the said Maria Josefa Romero, by rights accruing to her as the wife of said Castro, became the legal owner in fee-simple of one undivided half of the realty belonging to the common property of husband and wife in and to the estate aforesaid, under and by virtue of laws then and there in force.

That Nicholas Gutierrez, then governor of the Territory of California, by a document dated October, 1836, ordered the first alcalde of the port of Monterey to put the said Maria Josefa Romero in the judicial possession of said estate, which said possession was accordingly given.

That the said Maria Josefa Romero acquired under the said will of said Castro (in addition to the devise therein mentioned) a fee-simple title in and to said tract of land, Las Animas, by virtue of donation made to her by Mariano Castro aforesaid, more fully shown in said will, profert of which is here made.

That said will and estate was administered upon in conformity to law.

That said Maria Josefa Romero, by deed of the 13th day of December, 1850, and said Joaquin Castro, Felipe Castro, and José Castro, by deed of the sixteenth day of October, 1847, and said Carmen Castro, by deed of the 21st day of September, 1850, duly conveyed, jointly and severally, their interest and estate in and to said tract of land and

109 estate granted to and left by said Mariano Castro, to wit, the tract of Las Animas, as set forth in the expediente aforesaid, to this petitioner, José Maria Sanchez, aforesaid.

That this land has not been surveyed by the surveyor-general.

The said Mariano Cast'o and his legal representatives, the said Maria Josefa Romeo, Joaquin Castro, Felipe Castro, and Carmen Castro, and José Castro, and the petitioner, José Maria Sanchez aforesaid, by virtue of all and singular their respective periods of possession, have held the continued and uninterrupted possession of the land aforesaid from the date of the aforesaid settlement by Mariano Castro upon the said tract of Las Animas up to this inquisition, to wit, from on or about the 28th of November, 1808; that there is no known interfering claim in the premises; that petitioner relies for support of the claim herein mentioned upon the papers now and hereafter to be submitted, the evidence relative to said claim existing in the archives of the former governments of this territory, now under the charge of the surveyor-general, and all such other proof as may be pertinent to said claim.

The petitioner in this behalf prays that this honorable board have such evidence as may support this claim, and decree a confirmation thereof.

JOSÉ MARIA SANCHEZ.

110 Filed in office April 5th, 1852.

GEO. FISHER, *Secretary.*

No. 2.

Order of revival.

JOSÉ MARIA SANCHEZ
v.
THE UNITED STATES. } No. 161. Las Animas.

It appearing to the satisfaction of this board that the claimant, José Maria Sanchez, who presented this claim, has since died intestate, and that Vicente Sanchez, Refugio Sanchez, Cantitario Sanchez, Gregorio Sanchez, and Guadalupe Sanchez are his heirs at law, therefore, upon motion, it is ordered that the said case be, and is hereby, revived in the names of said heirs.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certfy that the foregoing order was made by the said board, on the 8th day of August, 1853, in said case, as appears by reference to journal, vol. 3, page 361.

In witness whereof I have hereunto subscribed my name, at office, in the city of San Francisco, this 27th day of December, 1855.

GEO. FISHER, *Secretary.*

Filed by consent.

A. GLASSELL,
Assistant U. S. Attorney.

111 (Indorsed:) No. 136. United States district court. The United States v. José Maria Sanchez. Certified copy of order of revival. Filed December 28th, 1855. By Cheevers, deputy clerk.

No. 3.

Decree of land-commissioners, confirming Las Animas.

VICENTE SANCHEZ ET AL., HEIRS AT LAW OF José Maria Sanchez, deceased,
v.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commissioner that the claim, as set out in the petition, is valid, and it is therefore decreed that the same be confirmed to said Vicente Sanchez and the other heirs at law of said José Maria Sanchez, deceased.

The land of which confirmation is hereby made to said heirs is that known by the name of Las Animas, situated in Santa Clara County, and bounded as follows, to wit: On the north by the rancho of San Francisco de las Llagas as far as the Lomita de la Linares; on the east by the Arroyo de las Llagas, which separates it from the rancho of San Isidro; on the south by the rancho of the Brea, belonging formerly to San Juan Bautista; and on the west by the sierra, as is
112 shown by the map which constitutes a part of the expediente on file in this case, to which reference is to be had, said premises containing four square leagues of land, more or less.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office February 14th, 1854.

GEO. FISHER, *Secretary.*

No. 4.

Notice of appeal to district court of the United States from land-commission on claim of Las Animas.

OFFICE OF THE
ATTORNEY-GENERAL OF THE UNITED STATES,
Washington, 17th January, 1855.

JOSÉ MARIA SANCHEZ
v.
THE UNITED STATES. } 161.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings
in which was received in this Office on the 28th day of September,
113 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney-General.

(Indorsed:) No. 136. United States district court, northern district. The United States v. José Maria Sanchez. Filed February 20th, 1855. Jno. A. Monro, clerk.

No. 5.

Decree of district court confirming claim for Las Animas.

In the district court of the United States in and for the northern district of California.

THE UNITED STATES, APPELLANT,
v.
WIDOW AND HEIRS OF JOSÉ MARIA SANCHEZ, deceased, appellees.
} No. 136. Stated term, May 17th, 1856.

This cause coming on this day to be heard upon the certified transcript of the proceedings and decision of the board of commissioners on private land claims in California, the papers and evidence on which the same are founded, and the pleadings and further evidence taken by order of this court, and the argument of counsel being heard; in
114 consideration whereof the court is of opinion that the title of the claimant to the land described in said transcript is valid and should be confirmed. It is therefore adjudged, ordered, and decreed that the said claim and title of the said widow and heirs of José Maria Sanchez, deceased, is valid, and the same is hereby confirmed. The land of which confirmation is hereby made is known by the name of Las Animas, lying and being in the county of Santa Clara and State aforesaid. The said tract is to be located according to the boundaries delineated on the diseño or map on file in the expediente, and referred to in the grant; provided that the said boundaries be located without prejudice to the rights of third persons existing previously to the date of the grant.

OGDEN HOFFMAN,
United States District Judge.

(Indorsed:) No. 136. United States district court, northern district of California. The United States v. Heirs of José M. Sanchez, deceased. Decree. Filed May 17th, 1856. Chevers, deputy.

No. 6.

Notice that appeal from district court would not be prosecuted.

California land-claims.

115 ATTORNEY-GENERAL'S OFFICE,
10*th November*, 1856.

SIR: In the case of the claim of José Maria Sanchez, confirmed to the claimant by the commissioners, case No. one hundred and sixty-one, (161,) appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

WM. BLANDING, Esq.
U. S. Attorney, San Francisco.

No. 7.

Stipulation that no further appeal would be prosecuted in Las Animas.

In the district court of the United States, northern district of California.

THE UNITED STATES
v.
THE WIDOW AND HEIRS OF JOSÉ MARIA SANCHEZ. } Case No. 136. Transcript 161.

In pursuance of a notice from the Attorney-General of the United States, hereunto annexed, it is hereby stipulated and agreed that no further appeal shall be taken in this case on the part of the United States, and that the claimants have leave to proceed under the decree of this court heretofore rendered in their favor as on final decree.

WILLIAM BLANDING, *District Attorney.*
THORNTON, WILLIAMS & THORNTON,
Attorney for Claimants.

116 (Indorsed:) No. 136. United States district court. The United States v. José Maria Sanchez. Case No. 136. Transcript 161. Stipulation. Filed January 26th, 1857. W. H. Chevers, deputy clerk.

No. 8.

Decree of district court granting leave to proceed under decree as final.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 26th day of January, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
JOSÉ MARIA SANCHEZ. } Case No. 136. Transcript 161.

The Attorney-General of the United States having given notice that no appeal to the Supreme Court of the United States will be prosecuted in this case, and a stipulation having been entered into by the district attorney that no further appeal shall be taken on the part of the United States, and for leave to the claimants to proceed under the decree of this court heretofore rendered in his favor; on motion of the dis-
117 trict attorney, it is ordered, adjudged, and decreed that the claimants have leave to proceed under the decree of this court heretofore rendered in their favor as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

(Indorsed:) United States district court. The United States v. José Maria Sanchez. Case No. 136. Transcript No. 161. Order. Filed January 26th, 1857. W. H. Chevers, deputy clerk.

No. 9.

Exceptions of claimants to survey of Las Animas.

In the district court of the United States in and for the northern district of California.

THE UNITED STATES
v.
WIDOW AND HEIRS OF J. M. SANCHEZ, DECEASED. } No. 136.

In the matter of the survey and location of the rancho Las Animas.

And now come the said claimants, by their attorneys, Thornton, Williams & Thornton, and except to the survey of the said rancho Las Animas, as made and approved by the surveyor-general of the United States for the State of California, and assign the following objections and grounds of exception to the said survey and location:

118 1st. That the said survey is not in accordance with the boundaries of the said rancho as given in the original grant, nor in the original diseño, nor is it in conformity with the boundaries specified in the decree of final confirmation.

2d. That said survey does not include all the lands granted to Mariano Castro, whose successors in interest said claimants are, nor all the land finally confirmed to said claimants.

3d. That the northern boundary, according to said survey, is terminated at or about a hill called "Lomita de las Linares;" whereas according to the original grant, diséno, and final decree of confirmation said northern boundary passes said hill and leaves it midway on said boundary.

4th. That the western boundary of Las Animas grant is the arroyo Piscadero, by which it is divided from the rancho Salsiquedes; but the said surveyor-general, in making said survey, has adopted another and different line and creek from that of the said Piscadero, leaving a large body of land as public land between the lines of the said survey and the Salsipuedes rancho or Piscadero Creek, which properly belongs to the Las Animas rancho according to the original grant, diseño, and final decree.

5th. That the said survey excludes a large portion of the land finally confirmed to said claimants, and the said surveyor-general has
119 included the same within the survey of an adjoining rancho, known as the Solis, to the great injury of the said claimants.

Now, therefore, the said claimants pray that said survey of the rancho Las Animas may be set aside and annulled, and a new survey thereof be ordered by this honorable court, so to be made as to include all the lands confirmed to them according to the boundaries delineated on the original diseño and described in the said grant and final decree of confirmation.

THORNTON, WILLIAMS & THORNTON,
Attorneys for Claimants.

(Indorsed:) No. 136. The United States v. José M. Sanchez, deceased. Exceptions to survey by claimants. Filed October 8th, 1860. W. H. Chevers, clerk.

No. 10.

Claimants' specification of objections to survey.

In the district court of the United States in and for the northern district of California.

THE UNITED STATES
v.
HEIRS OF JOSÉ MARIA SANCHEZ, DECEASED. } L. C. No. 162, D. C. 136.

120 The claimants in the above-entitled cause object to the survey of the Rancho de las Animas, therein claimed, as made and approved by the surveyor-general of the United States for the State of California, and assign the grounds of objection:

1st. The said survey is not in accordance with the decree of final confirmation, whereby the said lands were confirmed to the said claimants.

2d. The said survey is not in conformity with the original title and map, or diseño, referred to in the grant.

3d. The said survey is neither in conformity with the original grant or the said decree of final confirmation.

4th. The grant and decree of final confirmation are for a specific piece or parcel of land, by metes and bounds, and the whole of said land is not included within said survey.

5th. The land granted and confirmed is that delineated on the original map or diseño, without reservation or limitation as to quantity, and the said survey does not include the whole of said land so delineated and shown on said map or diseño.

6th. The said survey excludes a portion of the land confirmed to the said claimant.

The claimants, therefore, pray that the said survey may be disapproved and set aside, and that the said surveyor-general may be
121 required to survey the said land, according to the said grant and decree of final confirmation, so as to include the whole of the land described in said grant and decree, and to the extent and according to the boundaries described therein, and shown and marked on the said map or diseño referred to in said grant or decree.

THORNTON, WILLIAMS & THORNTON,
Attorneys for Claimants.

(Indorsed:) No. 136. The United States v. Heirs of José Maria Sanchez, deceased. Exceptions to survey. Filed December 6th, 1859. W. H. Chevers, clerk.

No. 11.

Petition of Shepard and Moore to intervene.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JOSÉ MARIA SANCHEZ. } No. 136.

In the matter of the survey of Las Animas.

To the Hon. Ogden Hoffman, judge of said court:

The petition of J. L. N. Shepard, in his own behalf and for John H.

Moore et als., respectfully represents that he is interested in the
122 rancho San Ysidro, which is bordering on this rancho; that he derives title from John Gilroy and wife by deed; that said Gilroy and wife were the original grantees of this part of San Ysidro, sold to your petitioner; that said Moore claims, as petitioner is informed and believes, under execution sale and Julius Martin, who held under deed from said John Gilroy and wife; that the survey made in this case embraces land belonging to San Ysidro, and known so to belong for many years past; that if the said survey is approved it will materially injure your petitioners. Wherefore, they pray your honor to allow them to intervene for the protection of their interests, according to the provision of the act of Congress in such case made and provided.

EDW. STANLEY,
For Petitioners.

J. N. L. Shepard, being duly sworn, says that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

J. L. N. SHEPARD.

Sworn to and subscribed before me this 3d day of October, A. D. 1860.

P. BARRY, [SEAL.]
Notary Public.

(Indorsed:) No. 136. The United States v. José Maria Sanchez. Petition and affidavit of J. N. L. Shepard et al. to intervene. Filed October 4th, 1860. W. H. Cheevers, clerk. Edw. Stanley, attorney.

123 No. 12.

Monition in Las Animas.

UNITED STATES OF AMERICA,
Northern District of California:

[SEAL.] The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 136, to José Maria Sanchez, known as "Las Animas," and situated in the county of Santa Clara, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, and they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 3d day of October, A. D. 1860, at eleven o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken; and what you shall have done with this writ do you then and there make return thereon.

124 Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 27th day of August, A. D. 1860.

W. H. CHEVERS, *Clerk.*

(Indorsed:) (D.) No. 136. United States district court, northern

district of California. In land cases. The United States v. José M. Sanchez. Monition. Returnable October 3d, 1860. Issued August 27th, 1860. Filed October 3d, 1860. W. H. Chevers, clerk.

No. 13.

Return of United States marshal, (indorsed on monition.)

The within monition was received by me on Monday, the 27th day of August, 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice for four consecutive Wednesdays in the San Francisco Herald, commencing on the 29th day of August, 1860, and for four consecutive Sundays in the San José Tribune, a paper published nearest the land, commencing on the 31st day of August, 1860.

Dated San Francisco, August 27th, 1860.

P. L. SOLOMON,
U. S. Marshal.

125

No. 14.

Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the third day of October, in the year of our Lord one thousand eight hundred and sixty. Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES v. JOSÉ MARIA SANCHEZ. } In land cases. District court, No. 136. Land com. No. .

And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded; on motion of , attorney for , proclamation was made that all parties having or claiming to have an interest in the survey and location of the land finally confirmed in the above-entitled cause appear and intervene for the protection of such interest, , the United States attorney, appeared for the United States, and John J. Williams for the claimant; Crockett & Crittenden appeared for Ed. Stanley, Wm. Blanding for Montgomery,
126 and Edward Stanley for J. N. L. Shepard and John Moore et al.; and on motion, it is ordered that they be allowed five days to make showing of their right to intervene, and no other person appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is, hereby entered.

(Indorsed:) No. 136. United States district court, northern district of California. In land cases. The United States v. José Maria Sanchez. Order on return of monition. Filed October 3d, 1860. W. H. Chevers, clerk.

No. 15.

Exceptions of intervenors to survey.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JOSÉ MARIA SANCHEZ. } No. 136.

In the matter of the survey of Las Animas.

And now comes Edward Stanley, claiming an interest in the ranch San Ysidro, which adjoins the above-named Las Animas, and in behalf of himself and J. L. N. Shepard and other claimants of San Ysidro, and files exceptions to the survey made in this case.

127 1. The survey made in this case improperly includes land belonging to San Ysidro, which adjoins the ranch on the east.

2. The San Ysidro ranch is of older date than the Las Animas; and when the grant for Las Animas was made, in August, 1835, the gov-
Page 117 of transcript. ernor, Figueroa, said: "As the boundaries in this case are not expressly defined, those set forth in the plot presented shall in future be known as such, leaving uninjured the right of any third party who may consider himself aggrieved by this proceeding."

3. That this survey extends the boundaries of the Las Animas as far east as the arroyo Las Llagas, thus including land which for many years before the grant in this case was made had been granted to Ignacio Ortega, the father of the original claimants of San Ysidro, by whom it was held in possession and cultivated for many years before the acquisition of the country by the United States, and has been held by them and their grantees ever since said acquisition.

4. That this survey was made in disregard of the evidence furnished by the original title-papers, and of witnesses whose depositions are on file in this case.

5. That the petition presented to Governor Figueroa asked but for four leagues of land, and the grant was made for four leagues;

128 but the survey in this case is made to embrace about six leagues of land.

6. That in a controversy before the Mexican authorities a division line was run and established between Las Animas and San Ysidro, as appears by the record of this court and in the office of the surveyor-general, which said line has altogether been disregarded in the survey, to the injury of the claimants of San Ysidro.

7. That the survey was made in disregard of the title-papers and of the map, a copy of which is on file in case No. 163, the same being a claim for part of the San Ysidro ranch.

Wherefore claimants pray that this survey be set aside, and that on the hearing of this case they have leave to refer to the original title-papers in the office of the surveyor-general, or copies thereof on file in this court, belonging to this and the adjoining ranchos.

EDW. STANLEY,
Attorney for Claimants of San Ysidro.

(Indorsed:) No. 136. The United States v. José Maria Sanchez. Exceptions to survey on the part of claimants of San Ysidro. Shepard et al. Filed October 12th, 1860. W. H. Chevers, clerk. Edw. Stanley, attorney.

129 No. 16.

Exceptions by United States to survey.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
JOSÉ MARIA SANCHEZ. } No. 136.

In the matter of the survey of Las Animas.

And now come the United States, by their attorney, Calhoun Benham, and file their exceptions to the survey made in this case.

1. This survey unjustly embraces land not granted or confirmed to the claimant, but belonging to the United States.

2. That the original grant in this case was for four leagues. The survey embraces 24,066.23 acres.

3. The said survey wholly disregards the map in this case, having been made in form entirely different from the map on file.

CALHOUN BENHAM,
U. S. Attorney, N. D. C.

(Indorsed:) 136. In the district court of the United States for the northern district of California. The United States v. José Maria Sanchez. No. 136. Las Animas. Exceptions to survey by United States. Filed October 9th, 1860. W. H. Chevers, clerk. Benham, U. S. attorney.

130 No. 17.

Order setting aside survey of Las Animas.

At a stated term of the district court of the United States of America for the northern district of California, held at the city of San Francisco on Tuesday, the twenty-sixth day of January, A. D. 1864. Present, Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
WIDOW AND HEIRS OF JOSÉ MARIA SANCHEZ, deceased. } D. C. No. 136.

In the matter of the survey and location of the rancho Las Animas.

This cause came on this day to be heard, and was argued by counsel, and thereupon and in consideration thereof it is ordered, adjudged, and decreed that the official survey of said rancho be set aside; and it is further ordered, adjudged, and decreed that the surveyor-general of the United States for the State of California make a new survey, as follows: Beginning at the sycamore tree, as marked on the plat of said official survey, on the southern line thereof, at or near the point marked "L A No. 4," at the end of course No. 7; and thence westerly along the dividing line between the Las Animas and Juristac ranchos, as laid down on Exhibit Barker No. 1,
131 filed in this case February 16th, 1861, to the eastern branch of the Pescadero Creek; thence up that stream, and following the

line of the Salsipuedes rancho, until it intersects the extension of course No. 27, westerly from the Lomita de Linares. The northern line shall be from said point of intersection along said extended line, and along said course No. 27 to the Las Llagas Creek, being corner of the Las Llagas and Polka ranchos; thence along said Las Llagas Creek, according to the courses of the said official survey, to the mouth of the Alamos Creek, which is the dividing-line between the La Polka rancho and the land granted to Juan Gilroy and wife, as part of the rancho San Ysidro; thence westerly along the line, as ordered to be surveyed, of the said lands of Juan Gilroy and wife to the line run by William J. Lewis, in 1850, and described in the decree directing a new survey of said lands granted to Juan Gilroy and wife; thence along said last-mentioned line southerly to the Lagunita, at the point which, according to the said decree, is to form the southwestern corner of the rancho granted to said Juan Gilroy and wife; thence easterly along the line of said Gilroy rancho, as ordered in said decree, to the Arroyo de las Llagas; and thence along said arroyo and the Pajaro River, following the lines and courses of the said official survey, to the point of beginning.

132 And it is further ordered that said new survey be made without delay, and so soon as completed be returned into this court for its approval.

OGDEN HOFFMAN,
Dist. Judge.

(Indorsed:) 136. U. S. district court. The United States v. José Maria Sanchez et al. Order rejecting official survey and directing a new survey. Filed January 26th, 1864. W. H. Chevers, clerk.

(See "Exhibit Barker, No. 1," hereto attached.)

(Here follow 2 maps, marked page 132.)

No. 18.

Decree approving survey of Las Animas.

At a stated term of the district court of the United States for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday, the 10th of June, A. D. 1865. Present, Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
v.
HEIRS JOSÉ MARIA SANCHEZ. } No. 136.

This cause came on to be heard upon exceptions to the official survey of the land confirmed herein, which survey is shown by the certified copy plat filed November 23d, 1859, and counsel for the respect-

133 ive parties having been heard, and due deliberation had in the premises, it was ordered and adju'ged that the said survey be, and the same was, set aside as erroneous.

And it appearing to the court that the location shown by the plat certified by L. Upson, surveyor-general of the United States for the State of California, and filed June 6th, 1865, is in accordance with the order of the court made and entered January 26th, 1864, it is now ordered, adjudged, and decreed that the same be and is hereby approved.

And it is further ordered, adju'ged, and decreed that the said certified plat, filed June 6th, 1865, and marked "Approved June 10th, 1865; Ogden Hoffman, dist. judge," be attached to and made part of this decree for a more full and particular description of the land finally confirmed herein.

OGDEN HOFFMAN,
Dist. Judge.

(See plat of rancho Las Animas, "approved June 10th, 1865; Ogden Hoffman, district judge," hereto attached.)

(Here follows map, marked page 133.)

No. 19.

Order granting appeal to circuit court from decree approving survey of Las Animas.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in
134 the city of San Francisco. on Saturday, the 10th day of June, in the year of our Lord one thousand eight hundred and sixty-five. Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
HEIRS JOSÉ MARIA SANCHEZ. } No. 136.

And now, at this day, on application of the claimants herein, by their attorneys, Patterson, Wallace & Stow, it is ordered that an appeal in behalf of said claimants from the decree of this court, entered this day, approving the location of the land confirmed herein, to the circuit court of the United States for the tenth circuit in and for the northern district of California, be and the same is hereby granted, and that a transcript of the record on appeal, as provided by the rules, shall be sent to said circuit court without delay.

(Indorsed:) No. 136. United States district court, northern district of California. The United States v. Heirs of José Maria Sanchez. Order granting appeal in behalf of claimants. Filed June 10th, 1865. Geo. C. Gorham, clerk, per Dan'l T. Sullivan, deputy.

(See plat of Las Animas, "approved June 10th, 1865; Ogden Hoffman, district judge.")

135 No. 20.

Notice that appeal to circuit court would be prosecuted.

U. S. district court, northern district California.

THE UNITED STATES
v.
HEIRS JOSÉ MARIA SANCHEZ. } No. 136.

SAN FRANCISCO, *June 10th*, 1865.

Notice is hereby given to all whom it may concern that the appeal to

the circuit court of the United States in and for the northern district of California from the decree of this day approving the location of the land confirmed herein, granted in behalf of said claimants, will be prosecuted.

PATTERSON, WALLACE & STOW,
Attorneys for Claimants.

To GEO. GORHAM, Esq., *Clerk of said Court.*

(Indorsed:) 136. U. S. district court. The United States v. Heirs José Maria Sanchez. Notice of intention to prosecute appeal. Filed June 10th, 1865. Geo. C. Gorham, clerk. Dan'l F. Sullivan, deputy. P., W. & Stow, for claimants

136 No. 21.

Decree of circuit court affirming decree of district court.

Circuit court of the United States, district of California.

THE UNITED STATES
v.
WIDOW AND HEIRS OF JOSÉ MARIA SANCHEZ, deceased.

The appeal in this case from the decree of the district court of the United States for the northern district of California, entered on the tenth day of June, one thousand eight hundred and sixty-five, approving the location of the land confirmed to the claimants herein, as shown by the plat of the land made by the surveyor-general of the United States for California, and which plat was filed in said district court on the said sixth day of said June, and is marked: "Approved June 10th, 1865; Ogden Hoffman, district judge," coming on to be heard upon the transcript of the record and proceedings of the said district court, and counsel for the appellants and for the respondents having been heard, and due deliberation having been had, it is ordered, adjudged, and decreed that the said decree of the said district court, entered on said tenth day of June, one thousand eight hundred and sixty-five, be and the same is hereby in all respects affirmed.

September 7th, 1866.

FIELD, *Circuit Judge.*

137 (Indorsed:) 376. U. S. circuit court, district of California. The United States v. The Widow and Heirs of José Maria Sanchez, deceased. Decree affirming decree of district court. Filed September 7th, 1866. Geo. C. Gorham, clerk.

(See map, "Exhibit A. S.," hereto annexed.)

(Here follows map, marked page 137.)

Solis patent.

The United States of America to all to whom these presents shall come, greeting:

Whereas it appears from a duly-authenticated transcript, filed in the

General Land-Office of the United States, that, pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Rufina Castro, widow, and the children and heirs of the late Mariano Castro, as claimants, filed their petition on the 2d day of March, 1853, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in which petition they claimed the confirmation of their title to a tract of land in Santa Clara County, State of California, known as the rancho of
138 Solis, said claim being founded on occupation, under authority granted to Mariano Castro in 1831 by Manuel Victoria, then political chief of California, and continued possession since that period; and whereas the board of land commissioners aforesaid, on the 4th day of December, 1855, rendered a decision in favor of said claimants, which decree or decision was, on appeal, affirmed by the district court of the United States for the northern district of California, at a stated term on the 1st day of May, 1856; and the said court further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and the same is hereby confirmed.

The land the confirmation of which is hereby made is situated in the county of Santa Clara, and is known by the name of "Rancho de Solis," containing two square leagues of land, as described and delineated on the map contained in the expediente, a traced copy of which is filed among the papers in the case, and to which reference is made for a more particular description. And whereas it further appears, from a certified transcript on file in the General Land-Office, that the Attorney-General of the United States having given notice that appeal would not be prosecuted in this case, the aforesaid district court, on the 24th day of March, 1857, ordered, adjudged, and decreed that the claimants have leave to proceed under the decree of this court heretofore ren-
139 dered in their favor as under final decree. And whereas, under the thirteenth section of the said act of 3d March, 1851, there have been presented to the Commissioner of the General Land-Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 3d day of April, 1858, by the signature of the surveyor-general of the public lands in California, which plat and certificate are in the words and figures following, to wit:

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
San Francisco, California.

Under and by virtue of the provisions of the thirteenth section of the act of Congress of the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and of the twelfth section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriation for the civil and diplomatic expenses of the Government for the year ending the thirtieth of June, eighteen hundred and fifty-three, and for other purposes," and in consequence of a certificate of the United States district court for the northern district of California, of which a copy is annexed, having been filed in this office, whereby it appears that the Attorney-General of the United States, having given notice that it was not the intention of
140 the United States to prosecute the appeal from the decision of the said district court, whereby it affirmed the decision of the board of commissioners appointed under the provisions of the said act of the 3d of March, 1851, to ascertain and settle the private land claims in the

State of California, of which a copy is also annexed, by which they recognized and confirmed the title and claim of Rufina Castro et al. to the tract of land designated as the Rancho de Solis, containing two square leagues, the said appeal has been vacated, and thereby the said decision' in favor of the said Rufina Castro et al. have become final, I have caused the said tract to be surveyed in conformity to the grant thereof and the said decision', and do hereby certify the annexed map to be a true and accurate plat of the said tract of land, as appears by the field-notes of the survey thereof, made by John Wallace, deputy surveyor, in the month of March, 1858, under the direction of this office, which, having been examined and approved, are now on file therein. And I do further certify that, under and by virtue of the said confirmation and survey, the said Rufina Castro et al. are entitled to a patent from the United States, upon the presentation hereof to the General Land-Office, for the said tract of land, the same being bounded and described as follows, to wit:

141 Beginning at a large oak-tree, known as the "Boca de la Cañada," marked with a large cross, now nearly filled up by the growth, now marked "S. No. 1," it being also the corner No. 1 for the "Las Uvas" and No. 7 for the survey of "Las Llagas," from which a marked tree bears south thirty degrees west, distant two hundred and thirty-eight links, and another marked tree bears north fifty-one degrees west, distant two hundred and forty links; thence according to the true meridian (the variation of the magnetic needle being fifteen degrees twenty minutes east) south fifty-one degrees west, at fifteen chains and fifty links crosses a creek running east, at nineteen chains and fifty links the further side of dry channel of same creek, thirty chains and fifty-seven links to a tree marked "S. No. 2" at foot of hill, from which a witness-tree of the side of hill bears south sixty-two degrees west, distant one hundred and forty-six links—station; thence south thirty-four degrees thirty minutes east, across the points of some ridges and several live-oak trees being blazed, eighty-five chains and ninety links to an oak-tree marked "S. No. 3," a witness-tree bearing north twenty-five degrees east, distant fifty-five links, and another witness-tree bearing south eighty-six degrees west, distant one hundred and seventy-five links—station; thence south twenty-two degrees thirty minutes west, along side of hill, thirty chains and thirty-four

142 links to an oak-tree marked "S. No. 4," from which a witness-tree bears south eighty-one degrees west, distant forty-five links, and another witness-tree bears south two degrees east, distant one hundred and thirty links—station; thence south seventy-five degrees fifteen minutes west, over several high ridges and very deep ravines, sloping towards the south and southwest, seventy-four chains and sixty links to a large oak-tree marked "S. No. 5," from which a witness-tree bears north thirty-one degrees west, distant one hundred and thirty-six links—station; thence north seventy-four degrees fifteen minutes west, across several ridges and ravines, at eighty-two chains, the top of a high ridge with blazed oak-tree, and continuing over more ridges and ravines with several springs, one hundred and seventy-eight chains, to a redwood post marked "S. No. 6," from which a witness-tree bears north fifteen degrees west, distant eighty-five links—station; thence south forty-nine degrees thirty minutes west, at thirteen chains across a creek running east, twenty-eight chains to an oak post marked "S. No. 7," from which a witness-tree bears south seventeen degrees west, distant twenty-three links, and another witness-tree bears south eighty-four degrees east, distant seventeen links—station; thence south fifty-two de-

grees thirty minutes east at thirty-five chains crosses a creek running north, at seventy-three chains another creek running northeast, at
143 ninety-eight chains the high point of a hill covered with thick brush and chemisal and then over several ravines and ridges, some making down towards the south and some to the north, and broken hills, two hundred and thirty-seven chains to a redwood post marked "S. No. 8," and also with reference to the Government survey on the line between townships ten and eleven south, of range three east, fourteen chains and eighty-five links west of the corner therein to sections five and six, thirty-one and thirty-two, from which a sycamore-tree bears west, distant five links, and a sycamore-tree bears north forty-three degrees west, distant four links—station; thence south forty-six chains and twenty links to a red-wood stake marked "S. 9," from which a witness-tree bears south sixty degrees west, distant eighty-five links, a witness-tree bears north twenty-seven degrees west, distant thirty-seven links, and another witness-tree bears south twenty-two degrees east, distant eight links—station; thence east, at forty-six chains and fifty links, a creek running northeast, and then over several spurs and ravines, one hundred and thirty chains to a creek running northeast, and then over numerous spurs and ravines making down north from the Santa Cruz Mountains to the foot of the range, and at three hundred and twenty-seven chains crosses the Caradero Creek to the southeast
144 three hundred and thirty-seven chains and seventy-seven links (several live trees being marked) to a redwood post marked "S. No. 10," from which a clump of sycamore-trees bears south sixty-two degrees east, distant two hundred and fifty-eight links—station; thence north four degrees thirty minutes east, at thirty chains, along Fines' fence, at forty-six chains and twenty links a post marked at intersection with the line between township ten and eleven, south of range three east, six chains and fifty links east of the corner therein to sections one and two, thirty-five and thirty-six, and then over level land one hundred and seventy-nine chains and twenty-five links to a large redwood post marked, "S. No. 11," at the southwest point of the "Lomitas de las Linares," from which a witness-tree bears south thirty-six degrees thirty minutes west, distant seven hundred and ninety links, and a witness-tree bears south sixty-four degrees east, distant nine hundred and twenty-one links—station; thence north seventy degrees fifteen minutes west, over several low hills and hollows and some level land towards the end of the line, two hundred and forty-seven chains, to a redwood post marked "S. No. 12," on side of a hill, from which a witness-tree bears south seventy-one degrees west, distant one hundred and fifty links—station; and thence north fifty-seven degrees fifteen minutes west,
145 over some small hills and ravines, sixty-six chains and fifty links to the large oak at the place of beginning; containing eight thousand eight hundred and seventy-five acres and forty-six hundredths of an acre, and being designated upon the plat of the public surveys as lot number thirty-eight, in township ten south, of range three east; lot number thirty-seven, in township eleven south, of range three east; and lot number thirty-seven, in township ten south, of range two east of the Mount Diablo meridian.

In testimony whereof I have hereunto signed my name and caused the seal of this office to be affixed, this third day of April, A. D. 1868.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor-General, California.

(The patent map of the Solis rancho is hereto attached, and marked "Solis.")

(Here follows map, marked page 145.)

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, have given and granted, and by these presents do give and grant, unto the said Rufina Castro, widow, and the children and heirs of the late Mariano Castro, and to their heirs, the tract of land embraced and described in the foregoing survey, but with the stipulation that, in virtue of the fifteenth section of the
146 said act, the confirmation of this said claim and this patent "shall not affect the interests of third persons;" to have and to hold the said tract, with the appurtenances, unto the said Rufina Castro, widow, and the children and heirs of the late Mariano Castro, and to their heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereto affixed.

Given under my hand at the city of Washington this eighteenth day of January, in the year of our Lord one thousand eight hun-
[SEAL.] dred and fifty-nine, and of the Independence of the United States the eighty-third.

By the President:

JAMES BUCHANAN.

By T. J. ALBRIGHT, *Secretary.*

J. N. GRANGER,
Recorder of the General Land-Office.

Recorded in vol. 2, pages 42 to 49, inclusive. Ex.: I. S. W.

In the district court of the third judicial district in the State of California, in and for the county of Santa Clara.

IN THE MATTER OF THE APPLICATION OF JOHN H. Moore to prove patent to rancho Solis.

147 John H. Moore, having given notice pursuant to the statute that on this day he would apply to the court to establish the genuineness of a patent issued by the Government of the United States to Rufina Castro et al. on the eighteenth day of January, A. D. 1859, for a certain tract of land situated in the county of Santa Clara, and known as "rancho Solis," and proof having been made that said notice was duly given, and the said patent having been inspected by the court, and the court being satisfied that it is genuine, it is hereby ordered and declared by the court that the said patent is genuine, and that this order be indorsed upon said patent under the seal of this court.

San José, July 28th, A. D. 1859.

SAM. BELL McKEE, [SEAL.]
Dist. Judge.

Attest:

JOHN B. HEWSON, *Clerk.*

Filed for record, at request of John H. Moore, at 10 20-60 o'clock a. m., August 3d, A. D. 1859.

AUSTIN M. THOMPSON,
Recorder,
By T. FRANK GRANT, *Deputy.*

No. 22.

Petition of Rufina Castro et als., praying confirmation of Solis.

Before the commission to settle land-claims in California.

Rufina Castro, widow, and the children and heirs of the late
148 Don Mariano Castro, give notice that they claim a tract of land in State [of California,] in Santa Clara County, and known as the rancho of Solis. Said land was occupied in February, 1831, pursuant to an authorization or license to that effect given by the political chief of the Territory of California, Don Victoria, and has ever since been in the quiet occupation of said Don Mariano and the present claimants, his widow and descendants. On the 31st of May, 1833, said Don Mariano presented his petition before the then political chief, Don José Figueroa, for a grant in form of said land; which said petition was referred, according to usage, by Governor Figueroa to the council of Monterey, and while there pending was opposed by a pretension set up by the late Carlos Castro that the said land was a portion of the Rancho de las Animas, owing to which counter-pretension a long controversy ensued, and these claimants are not informed whether a title in form ever was issued to their said ancestor or not, but know that he and they have ever been reputed and recognized as the owners of the said tract, and have, with the knowledge of the Government, so occupied and held it for a space of upwards of twenty years, and the original authorization thereto having been revoked. Wherefore they claim that they hold the same by equity, by the usages and customs of the country, and by prescriptive
149 right. A copy of the record and proceedings relative to said tract, as they exist in the archives of the former governments of California, is herewith filed, and the petitioners ask leave to file at future day, as evidence in the case, a certified transcript of said record and a translation of the same.

By their attorneys:

JONES, TOMPKINS & STRODE.

Filed in office March 2d, 1853.

GEO. FISHER, *Secretary.*

No. 23.

Decree of land commission confirming Solis.

RUFINA CASTRO ET ALS.
v.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is valid, and it is therefore decreed that the same be confirmed to them.

The land of which confirmation is made is situated in the county of Santa Clara, and is known by the name of Rancho de Solis, containing two square leagues of land, as described and delineated on the map contained in the expediente, a traced copy of which is filed among
150 the papers in the case, and to which reference is made for a more particular description.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office December 4th, 1855.

GEO. FISHER, *Secretary.*

No. 24.

Notice that appeal in Solis claim would be prosecuted.

OFFICE OF THE ATTORNEY-GENERAL OF THE UNITED STATES,
Washington, 18th March, 1856.

690. Solis. Rufino Castro et al., claimants.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 16th day of February, 1856, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney-General.*

151 (Indorsed:) U. S. D. C. N. D. Cal. United States v. Rufino Castro. No. 405. Appeal-notice filed April 15th, 1856. Chevers, deputy.

No. 25.

Notice that appeal in Solis would not be prosecuted.

California land-claims.

ATTORNEY-GENERAL'S OFFICE,
6th February, 1857.

SIR: In the case of the claim of Rufina Castro et al., confirmed to the claimants by the commissioners, case No. six hundred and ninety, (690,) appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING,
United States Attorney.

WM. BLANDING, Esq.,
San Francisco.

No. 26.

Decree of district court affirming decree of land commission confirming Solis.

In the district court of the United States for the northern district of California.

THE UNITED STATES, APPELLANTS,
v.
RUFINO CASTRO ET ALS., APPELLEES. } No. 405. Decree. Rancho Solis.

Stated term, May 1st, 1856.

152 On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

This cause coming on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascer-

tain and settle the private land claims in the State of California, under the act of Congress approved on the 3d day of March, 1851, upon the transcript of the proceedings and decision of the board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed that the decision of the said commissioners be and the same hereby is affirmed. And it is further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and the same is hereby confirmed. The land the confirmation of which is hereby made is situated in the county of Santa Clara, and is known by the name of "Rancho de Solis," containing two square leagues of land, as described and delineated on the map contained in the expediente, a traced copy of which is filed among the papers in the case, and to which reference is made for a more particular description.

OGDEN HOFFMAN,
U. S. District Judge.

153 (Indorsed:) No. 405. United States district court of the United States for the northern district of California. The United States v. Rufina Castro et als. Decree. Filed May 1st, 1856. Chevers, deputy.

No. 27.

Notice that no further appeal would be prosecuted in Solis claim.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
RUFINA CASTRO ET AL. } D. C. 405. L. C. 690.

In pursuance of a notice from the United States Attorney-General, hereto annexed, it is hereby stipulated and agreed that no further appeal be taken on the part of the United States, and the claimants have leave to proceed under the decree of this court heretofore rendered in their favor as under final decree.

San Francisco, March 24th, 1857.

WM. BLANDING,
District Attorney.

E. STANLEY,
Attorney for E. A. Lawler, of Counsel.

(Indorsed;) United States district court. The United States v. Rufina Castro et al. Stipulation. Filed March 25th 1857. W. H. Chevers, clerk.

154 No. 28.

Order of district court that claimants of Solis have leave to proceed as under final decree.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the

city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven—the honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
RUFINA CASTRO ET AL. } D. C. 405. L. C. 690.

The Attorney-General of the United States having given notice that the appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the United States attorney, on motion of the district attorney it is ordered, adjudged, and decreed that the claimants have leave to proceed under the decree of this court heretofore rendered in their favor as under final decree.

OGDEN HOFFMAN,
United States District Judge.

(Indorsed:) United States district court, northern district of California. The United States v. Rufina Castro et al. Order. Final decree. Filed March 24th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

155 No. 29.

Jurisdiction of Monterey, year 1833.

II.

"EXPEDIENTE SOLIS."

Expediente upon the land called "El Solis," solicited for its cultivation by Mariano Castro.

Spanish diseño Solis.

El solicitante pretarde el terreno indicado de una legua de tierra desde las lomas de les Linares hasta la sierra de Sta. Cruz y otra legua desde la boca de la cañada para el rumbo á donde esta la siembra del trigo incluyendo el corto terreno plano en donde esta fabricada la casa y corrales.

(See map hereto attached.)

(Here follows map, marked page 155.)

[Stamp third, 2 reales.—Provisionally by the maritime customs of the port of Monterey for the years 1833 and 1834.]

FIGUEROA.
JOSÉ RAFAEL GONZALES.

Señor Political Chief:

The citizen Mariano Castro, a resident belonging to this port, comes before your excellency in due form of right, and with due respect represents, that on the 21st of February, 1831, I directed an instance (petition) to the superior political chief, Don Manuel Victoria, petitioning for a place that is in the jurisdiction of this post, called
156 "El Solis," with the object of cultivating it in the best manner possible, and *forming* it with camp utensils and other works. On the

27th of the above month I obtained the superior decree favorable to my petition, granting it to me provisionally, and with the privilege I undertook to build a house and construct corrales. I introduced some camp utensils, and up to this date, by force of my work, I maintain it cultivated, with works as far as my means have permitted; and desiring to dedicate myself to the improvement of it by obtaining the ownership, and to insure by these means the fate of a numerous family which I now have, I direct myself to the consideration of your excellency, accompanying the design of the land which I pretend for, for the best intelligence, and marking it also on the original document of the grant that I obtained to possess it provisionally. Wherefore, from the first consideration of your excellency, I await the result more favorable, serving to give this my petition such consideration as you may deem well.

Monterey, 31st May, 1833.

MARIANO CASTRO.

MONTEREY, *June 3d*, 1833.

In conformity with the laws upon this subject, inform of the ayuntamiento of this capital whether the party interested in this instance
157 has the requisites necessary to be attended to in his petition; whether the land that he applies for is composed within the twenty leagues limitsofes or the ten leagues littorales, as expressed in the law of August 18th, 1822; whether it has belonged or does belong to any private individual corporation or pueblo, or whether it is known as vacant; also whether the land is irrigable or for pasture, with everything else that may be consistent to illustrate the subject. The señor superior political chief thus commands, decrees, and designs, to which I give faith.

FIGUEROA.
AGN. V. ZAMORANO.

At a session of this day this petition was referred to the ayuntamiento of this capital, and it was granted to be passed to the commission of colonization and vacant lands.

Monterey, June 8th, 1833.

JOSÉ MARIA MALDONADO, *Sec'y.*

Señor Political Chief:

The illustrious ayuntamiento of this capital, with the object of giving to your excellency the information that you require in your superior decree of the 3d of June last, this present petition was handed to the permanent commission on colonization and vacant lands, who
158 presented the opinion that is attached to this expediente, and, its contents being what this corporation can inform, they reproduce in all its parts, adding to it your first proposition, in the following manner: "And without its prejudicing any of the adjoining parties;" returning to your excellency the said expediente in fulfillment of what was accorded in session this day.

Monterey, 6th July, 1833.

MARCELINO ESCOBAR.

JOSÈ MARIA MALDONADO, *Secretary.*

[Stamp third, 2 reales.—Provisionally used by the administration of the maritime customs of Monterey for the years 1833 and 1834.]

FIGUEROA.
JOSÉ RAFAEL GONZALES.

MONTEREY, *November* 21*st*, 1833.

In conformity with the information of the ayuntamiento, let the party of Mariano Castro be notified that within fifteen days he shall inform that the land he requests does not belong to the Rancho de las Animas, so that by seeing same it may disposed of as convenient; it being understood that if he does not do this within the time specified, his petition cannot be considered. The señor political chief of the territory, general of brigade, Don José Figueroa, thus decrees, commands, and signs, to which I give faith.

FIGUEROA.
AUGUSTIN V. ZAMORANO.

159 Not having appeared in this bureau the party of Mariano Castro until now, it is noted for the due consideration, and signed in Monterey, January 28th, 1834.

AUGUSTIN V. ZAMORANO.

III.

MONTEREY, *January* 30*th*, 1834.

Place before you the decree of the 21st of November last, notifying the party with this that within fifteen days, counted from this date, he shall prove that the land he solicits does not belong to Las Animas. The Señor D. José Figueroa, general of brigade, commandant general, inspector, and superior political chief of Upper California, thus I command, decree, and sign, to which I give faith.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO, *Srio.*

On the 31st of January, 1834, the party of Mariano Castro was informed of the decree that precedes of the señor superior political chief, and, being read to him, said that he heard it, and that he would give it due fulfillment, and for due fulfillment the party interested signed it with a cross, not knowing how to sign.

AUGUSTIN V. ZAMORANO. +

[Stamp fourth of office.—Provisionally used by the sub-
160 altern commissary, ad interim, of the port of Monterey, for the years 1830 and 1831.]

OSIO.

Señor Superior Political Chief:

The citizen Mariano Castro, a neighbor and resident in this port, comes before your excellency and says that, he being the possessor of two hundred head of cattle and one mañada of horses, he is, with these interests, upon the land of another, and he is under the obligation to separate from it, the number being now on the increase; and in order to seek for his security, I direct myself to your excellency, soliciting, although it be provisionally, the place called "Joaquin Solis," which, although it was occupied at another time by the person of this name, it is now abandoned and vacant, and without any creditors, [claimants.] Wherefore to your excellency I supplicate that you will accede to this my petition, granting to me at the moment the license that I ask, and I remaining subject to take such steps as the laws order, without prejudice to the adjoining persons who have the said land.

MONTEREY, *February 21st*, 1831.

At the request of the party interested, not knowing how to write.

JOSÉ AGUILLAR.

161 MONTEREY, *February 27th*, 1831.

As long as the party interested shall form works, and shall have the land cultivated that he pretends for, I permit him to occupy the land provisionally as set forth in his petition.

VICTORIA.

[Stamp third, 2 reals.—Provisionally used by the administration of the maritime customs of Monterey for the years 1833 and 1844.]

FIGUEROA.

JOSÉ RAFAEL GONZALES.

The commission named of colonization and of vacant lands, with due consideration of the petition of the citizen Mariano Castro, relative to the "sitio" called "El Solis," and also the decree accompanying it, notwithstanding it requires light to give due fulfillment to said superior decree, reflect as follows, be the party interested a Mexican citizen: That the land he applies for is not comprised in the twenty leagues limitrofes, or in the ten leagues litorales, as expressed in the law of August 18th, 1824; that it is considered as belonging to the Rancho de las Animas, called commonly of the Castros, it being their property, and to this effect submit to the deliberations of the I. A. the following propositions:

1st. There can be granted to the party interested the land or part of it that does not belong to the Rancho de la Animas.

162 2d. That he make it known by a document that it does not touch the mentioned ranch at any part.

Monterey, 20th July, 1833.

JOSÉ AVIA.

JOSÉ ANTONIO ROMERO.

IV.

The land having been finally proved, as ordered by the decree of November 21st, 1833, and it is confirmed by another of January 30th, 1834, for the party interested to prove within the term of fifteen days that the land which he applies for does not belong to Las Animas, the expediente will be taken as conclusive. Wherefore I order it to be archived.

The Señor Political Chief, August 8th, 1835.

CASTELLO,
Secretary.

Having presented himself in this court, the neighbor Mariano Castro, to declare the limits of the land which touches the sitio del Carneadero y Animas, possessed by the family of the deceased Mariano Castro, which, taken with the information of witnesses who presenced at the time of its date, and the first witness, José Antonio Mesa, who stated that this sitio measured from the mission of San Juan Bautista, from a large tree before the well of said place, and from there was measured from the portion of the sitio of the deceased Ignacio Ortega, which is be-

163 tween the creek of the Carneadero and the cienega, and which is from east to west; and at the north they did not enter upon any

measurement, more than that it was said that it might extend to the hill of "Linares." The second witness, Juan Alvirez, who measured from the mission of San Juan Bautista to a large tree, before arriving at the well, three leagues to the poso viejo of the creek, at the north, and to the eastward, between the cienega of Carneadero, a quarter, and that there was not any more measurement in the sitio. To all of which I certify for information to the petition of the party interested.

Pueblo de San José Guadalupe, February 9th, de 1834.

JOSÉ ANTONIO MESA. +
JUAN ALVIRES.
PEDRO CHABOYA.

SALVIO PACHECO, *Secretary.*

[Stamp third, dos reales. Provisionally used by the administration of the the maritime customs of Monterey for the years 1833 and 1834.]

FIGUEROA.
JOSÉ RAFAEL GONZALES.

Señor Superior Political Chief:

The citizen Carlos Castro, a resident of the Pueblo de San José Guadalupe, before the notorious justification of your excellency,
164 in the best form of right as permits, appears and says that he having made it known by the superior decree of your excellency of the third of this month that the progress of the expediente as sought for of the place called San Franco. de las Llagas, uniting with the Cañada de las Uvas, known now as the Rancho de Solis, he suppended, for having applied for this and a part of the other place, the citizen Mariano Castro, until he should finish the necessary steps as set forth in the expediente sought for by the latter, so that both applicants can deduct the right which reciprocally assist them, and the most meritorious be attended to. Imputed by the necessity of saying, in justice to the rights which concur to the one who presents himself, he states that since the year 1828 he has occupied the place of San Francisco de las Llagas, where he has built a house, out-house, a manufactory of soap, and a corral with eight hundred head of cattle, horned, and more than one hundred head of horses; but in attention that this place is very scarce of water and the pasturage bad, in the year 1830, at the time that they placed at public auction the which he had in the Cañada de las Uvas, Joaquin Solis, the party that represents, took with the object of acquiring some the said cañada, because he considered that it was the only place whither his cattle might range, and without this the place of Las Llagas would not serve him. In
165 taking said , as referred to, the Señor Echandea, antecedent of your excellency, assured him, although verbally, that the said cañada should be granted to him, notwithstanding he had it applied for since the year '27; and with this hope he has been, up to the present time, awaiting the resolve. Señor Victoria, in the year 1831, granted provisionally to the citizen Mariano Castro the use of said cañada, but he manifested to him that he should consider it (as set forth) with right to the said cañada; and taking into consideration his reasons, he called in that act Mariano Castro, and he having appeared, I warned him to deliver up the instance which had been decreed to him, to withdraw his grant respecting the right to the land that petitioner solicited.

Then Marino Castro replied that said documents had been lost; and in view of this I told Mariano Castro to solicit for another "sitio," and

that he should not submit that one, and in effect he solicited for La Brea, that he might be permitted to occupy it, with the permission of the padres ministers of the mission of San Juan Bautista, that belonging to said mission, and according to what the deponent understands latterly he has known that Mariano Castro has presented said instance, that he asked for it, and consequently at that time he operated with malice, and that in his petition he surprised Señor Victoria.

166 Notwithstanding what is set forth, I consider that merits should be considered of the party representing, which are those of his having served as a settler, although of tender age; that also of having served in the military causes twenty years, and with seven years of actual service in the company of "milicio de artilleria" in the grade of first corporal; that also of having been speaker of the "exma. deputacion territorial," and also a peaceable and laborious citizen, as is public and notorious.

Thus, then, if to Mariano Castro there should aid him the same rights or superiorities from now, it is but just that he should be considered.

But if in case these representations are more to be considered, I ask that Mariano Castro be made to take away from said Cañada de las Uvas whatever he may have there, for the security of the property of this deponent.

To your excellency I humble supplicate that you will admit of this exposition in due form of justice, swearing that it shall not be for malice but the necessary.

Monterey, 12th June, 1833.

CARLOS CASTRO.

[Stamp third, dos reales.—Provisionally authorized by the ad-
167 ministration of the maritime custom-house of the port of Monterey for the years 1833 and 1834.]

JOSÉ RAFAEL GONZALES.
FIGUEROA.

Señor Superior Political Chief:

The citizen Mariano Castro, before your excellency, with due respect, in the best form of right, represents: That by virtue of the contents, which, on the 14th of June last, your excellency decreed upon the petition of the citizen Carlos Castro, which I received yesterday, in order that I may state in defense of my right, replying to the allegations upon which this citizen founds his rights to take from me the land called "El Solis," which I actually occupy by a grant from the antecedent of your excellency, as will be seen by documents in the office of the political chief, I say: That the citizen Castro does not equivocate at all when he manifests that his desires have always been to remain with the ownership of said place, to which, by mistake he gives the name of "Cañada de las Ubas," with the intention of embracing an immensity of land so considerable that would not but be prejudicial to other individuals, principally to the party that sets forth, he having already built a house, a mill, corrals, and considerable other works; but yes he is mistaken without doubt when he says that the lands upon which
168 his cattle graze are scarce of water and of bad pasturage, and of that truth undoubted testimony could be given to your excellency of individuals who know and that have inspected the lands and its advantages. He is also mistaken in saying that Sor. Victoria intended to withdraw the grant expedited in my favor, when, on the contrary, said chief, by virtue of the instance and other steps taken by the citizen Castro to prevent my getting said sitio, replied that, to avoid

difficulty and questions, he would personally pass to place us on a par, measuring to each one land proportioned to our improvements or advances. Remember that Señor Castro, upon this reasoning, replied that in such a case he would abandon all instances that made reference to the "sitio" that he occupied. Whereupon Señor Victoria stated that he was then at liberty to apply for another. The citizen appears to be mistaken in stating that, in consequence of what had passed before Señor Victoria, he solicited the place called "La Brea" of the padres of the mission of San Juan Bautista. This no doubt was so, but was previous to soliciting that which I actually occupied, which I looked for, stimulated by the same Sr. Castro, who invited me to become his neighbor.

Up to here, señor, arrive we at the merits which he has of being preferred in right, and there is no doubt in any of them. If he has served in the career of arms twenty years, no less time, perhaps, have I
169 served, and also as a resident. Where an emergency has offered, I have loaned my services freely as a soldier, and of my conduct I will present sufficient documents; to this he alleges the right of concession that he obtained, and of which this citizen always has been in possession, has undertaken works, and has cultivated as far as his labors would permit, having upon the land two hundred head of cattle and one hundred of horses. I am certain, without equivocation, that in no manner would Mr. Castro be prejudiced, as he states, by the scarcity of water, of which he complains, for the "sitio" which he possesses is abundant and extensive, sufficient to *quatriplicate* the interests that he has and to extend his works. The Cañada de las Ubas, which he cites, is now vacant, and he only wishes to apply this name to the "sitio" that I have pretended for and that I actually occupy, and to prove this truth I oblige myself to present *idonerous* witnesses who will inform with integrity to what I have stated; if not, your excellency might see fit to send some satisfactory persons toreconnoiter the lands, or such information as might be well.

Wherefore I insist on my petition, believing myself with all the right to the land, for the citizen Castro has no other view than to injure me; or if not, as this señor in the times that this sitio has been
170 occupied by other individuals has never mentioned about damages, as he now alleges. His interests are secure, and he cannot complain of anything else. Wherefore your excellency will please *will* dispose of this as you may think just, not operating for the evil and the necessary.

Monterey, December 24th, 1833.

MARIANO CASTRO.

MONTEREY, *January 10th*, 1834.

To examine briefly and summarily the litigation commenced in this expediente, let the parties contending be cited, so that within six days, counted from this date, they appear by person or by agent before this government to explain their rights. The Señor Don José Figueroa, brigadier-general, commandant-general, inspector, and superior political chief of Upper California, thus commands, decrees, and signs, of which I give faith.

JOSÉ FIGUEROA.

AUGUSTIN V. ZAMORANO, *Sec'y.*

Not having appeared, the parties of the foregoing land, up to-day, it is noted for due effect, and I sign in Monterey, January 29th, 1834.

AUGUSTIN V. ZAMORANO.

[Stamp third, 2 reales.—Provisionally authorized by the maritime custom-house of the port of Monterey for the years 1834 and 1835.]

FIGUEROA.
RAFAEL GONZALES.

171 In the presidio of Monterey, on the 29th day of January, 1834, by virtue of the foregoiug decree, appeared the citizens Carlos Castro, and Mariano Castro in person, to which I give faith. I knew them, and made known that the señor political chief, in order to avoid a protracted litigation and to conciliate the interests of both parties, it was proposed to them that they should have an amicable adjustment and arrangement upon the land called "El Solis," that both pretended to for their advantage.

This being entered into, and after long conferences had at the moment and previously, on yesterday they resolved that they could not entertain any of the propositions reciprocally made, resigning themselves to the resolve of the government upon the land in question, they not being able to arrive at any agreement. In this state the said señor superior political chief concluded the trial of conciliation, and ordered them to proceed as they thought best, making of effect this information, which they signed with his excellency.

JOSÉ FIGUEROA.
CARLOS CASTRO.

AUGUSTIN V. ZAMORANO,
Secretary.

MONTEREY, *January 29th*, 1834.

Having shown to the parties litigating, so that they might have an amicable arrangement respecting the land in litigation, without
172 the necessity of going to a contention trial, this not suiting the parties, because neither party wished to arrange, and this not being a matter of juridical resort, but that of the political government, being a pretension for land to which neither party has the right of ownership, let it be resolved upon gubernatorially in accordance with acts, and giving in conclusion this expediente attached, for effect, to the party of Mariano Castro, and render an account thereof to be resolved upon making it known to the parties that they may make use of their right. The Señor Don José Figueroa, brigadier-general, commandant-general, inspector and superior political chief of Upper California, thus commands, decrees, and signs, to which I give faith.

JOSÉ FIGUEROA.

AUGN. V. ZAMORANO,
Secretary.

[Stamp third, 2 reales.—Provisionally authorized by the maritime customs of Monterey for the years 1834 and 1835.]

FIGUEROA.
RAFAEL GONZALES.

On the second of February, 1834, having appeared in this office the citizens Carlos Castro and Mariano Castro, the preceding decree was made known to him of the señor political chief of this territory of the
173 29th of January last, and they, having been instructed therein, stated that they heard it, and that they would conform with the disposition of the governor, and that they would represent at its time the mutual rights which assisted to each one; and for the due effect

the first signed, and the second crossed, not knowing how to write, with me, the secretary of the political chief of this territory.

AUGUSTIN V. ZAMORANO.
CARLOS CASTRO. ×

This expediente was detained until the 7th day of August of this year, 1835, which the señor political chief ordered to be archived, as set forth annexed.

Srio. CASTILLO.

The testimony having been closed, by consent of parties the jury was discharged and the cause submitted to the court for decision; and at the May term of said court for the year A. D. 1869, to wit, on the 11th day of May, 1869, the said court filed its opinion in writing in the words and figures following, to wit:

Judgment.

[Title of court and cause.]

This is an action of ejectment to recover possession of a tract of land in Gilroy Township, Santa Clara County. Plaintiff claims title to
174 the land as part of the Las Animas ranch. Defendants are in possession, claiming the title to it as part of the Solis ranch. Title of the Las Animas has been confirmed by the judicial tribunals of the United States, and a survey of the ranch has been approved by the final judgment of the United States circuit court in June, 1866. The title of the Solis has also been confirmed by the same tribunals, and a patent has been issued by the Government of the United States in January, 1859. Both the patent of the Solis and the confirmation and approved location and survey of the Las Animas include the land in controversy.

By an act of Congress, known as the act of 1860, the location and survey of a ranch claimed under a Mexican grant, approved by the final judgment of the United States court having jurisdiction of the subject, is equivalent to a patent. The location and calls of the grant are fixed by the judgment of the court, and this perfects the title of the claimant. All else which remains to be done to invest this title with a legal character is only the performance of a ministerial duty, which has no virtue to impart to the title any greater validity than what it had already received from the confirmation and judgment of location and survey. (Waterman v. Smith, 13 Cal.; Natoma Water Company v. Clarkin, 14 Cal.; Seal v. Ford, 29 Cal.; and Mahoney v. Van Winkle, 33 Cal.)

175 The case, therefore, presents for consideration the question of two patents covering the same tract of land. Counsel for plaintiff insist that the plaintiff has the prior equity, although the younger patent, and that in the trial of this action of ejectment the court must go behind the patents and allow the prior equity of the plaintiff to prevail against the elder patent of the defendants.

This is a new doctrine in the trial of an action of ejectment; but it is based upon recent decisions of the supreme court of this State, upon which plaintiff's counsel rely. In Smith v. Athearn, 34 Cal., the court says: "In cases of conflicting patents from a paramount source of title, it is well settled that, even at common law, in actions of ejectment, the court will look beyond the patents and ascertain which party has the

prior equity. When this is ascertained, the equity will attach itself to the legal title, which will take effect by relation at the time when the equity accrued. Thus it often happens that a junior patent, founded on a prior equity, is held, even in a court of law, to prevail over an elder patent founded on a junior equity." Ross v. Barland, 1 Peters, and Bagnal v. Broderick, 13 Peters, are referred to in support of this doctrine. And in the more recent case of Athearn v. Poppe, the court says: "Even in actions at law, where there are conflicting patents for the same land, the court will go behind the patents to ascertain
176 which party had the prior equity; and if the junior patent is founded on the prior equity, it will take effect by relation from the time when the equity accrued, and override an elder patent founded on a junior equity. (Ross v. Barland, 1 Peters; Bagnall v. Broderick, 13 Peters; Smith v. Athearn, 34 Cal.")

Of course, if these decisions are the law of this question, I owe them the duty of obedience, and the plaintiff is entitled to recover the land; for, although his patent is younger than that of the defendants, the equity to which it relates is the elder. But I do not consider them as the law of the question; for—

1st. In both cases the language is mere dictum. The question discussed was not involved in either. Both cases, it is true, involved the trial of an equitable right to land; but in one it was presented by an equitable defense to the action of ejectment, and in the other by a bill in equity tried at the same time with the action of ejectment.

2d. The cases referred to do not sustain the doctrine. Ross v. Barland was an action of ejectment tried in a State court of Mississippi, where, by statute, the court in an action of ejectment was authorized to go behind patents and decide upon the equities to which the relate. But, while upholding this practice as a matter within the power of the State legislature, the Supreme Court
177 of the United States said, "that it is undoubtedly true that, upon common-law principles, the legal title should prevail in the action of ejectment upon the same grounds that the legal right prevails in other actions in courts of law. * * * And in States where the principles of the common law prevail, it is held that in a trial at law the courts will not look behind or beyond a grant to the rights upon which it is founded, nor examine the progressive stages of title antecedent to the grant." Bagnel v. Broderick (13 Peters) was also ejectment for land in New Madrid, in the State of Missouri. The plaintiff claimed title through a patent issued by the United States, under an act of Congress passed in 1815, which authorized the issuance of patents for lands in lieu of those injured by the great earthquake of 1811; and on the trial it was insisted that the defendant had the better equity, and that under an act of the legislature of the State of Missouri, the equity of the defendant should prevail against the patent of the plaintiff. But, even in view of the Missouri statute, the Supreme Court of the United States said, "that even if the superior equity of the defendant had been set up in opposition to the patent, still the patent would have been the better legal title. The whole legislation of the Federal Government in reference to public lands declares the patent the superior and
178 conclusive evidence of legal title. Until it issues, the fee is in the Government. By the patent it passes to the grantee, and he is entitled to recover the possession in ejectment." The rule of Ross v. Barland, as explained by Mr. Chief Justice Marshall in the subsequent cases of Blunt's Lessees v. Smith, (7th Wheaton) is recognized merely as a rule of practice under the legislation of North Carolina, Tennessee,

and Mississippi, and not as a principle applicable to trials of ejectment in a court of law.

There is no doubt that a court of law in an action of ejectment, under equity pleadings, can control a patent and subject it to prior equities of another. This is but the exercise of ordinary chancery powers, which may be exercised in proper proceeedings by our courts under the code. But in the absence of an answer in which the equitable right is set up, the rule has never prevailed that, in the trial of an action of ejectment, a prior equity shall prevail against a patent. (Ross v. Barland, 1 Peters; Bagnal v. Broderick, 13 Peters; Wilcox v. Jackson, 13 Peters; Blunt's Lessees v. Smith, 7 Wheaton.)

3d. All these cases, and Smith v. Athearn and Athearn v. Poppe, were controversies for land which had been part of the public land of the United States; and even if the doctrine announced were the law of them, I do not consider it applicable to the class of cases of which
179 the case at bar is one; for the patent of the defendant, as well as that of the plaintiff, is the last act by the Government of a series of acts necessary to transfer a perfect title to the land described in it. This title did not emanate from the Government of the United States, but from the former government of Mexico. It was found to be inchoate or imperfect when the United States acquired the country, and needed confirmation and location to make it perfect. This the United States, under its legislation, proceeded to do. When it was done, by confirmation, location, and survey, the land described was considered appropriated by the title. It is considered as the land to which the grant by the previous Government was intended to attach. And the patent, or the judgment of location and survey, affords conclusive evidence that the grant by the former Government was genuine; that the claim under it was valid; and that the grant is correctly located so as to attach to the premises as they have been surveyed and described. Being conclusive evidence of these things, the patent is not the subject of review in an action at law, nor can it be assailed for irregularities in procuring it. As I have already said, a court of equity, or a court of law sitting as court of equity, in proper proceedings can control the patent, and charge the conscience of the patentee with any fraud or mistake in pro-
180 curing it, in favor of the prior equity of another; but in a court of law it is conclusive evidence of title, not only as between the patentee and the Government of the United States, but all persons claiming under the United States, and all others who cannot show a better title.

The junior patent of the plaintiff is not a better title. If both patents are the culminations of grants of a like nature—that is, grants which were inchoate or imperfect—the first patent issued passes the fee of the land, and the Government had no right to grant the same land afterwards to another. The right perfected by the patent becomes a vested right to the land described in it, which can no more be divested by a subsequent patent from the same source than the ownership of a tract of *a* land conveyed by a recorded deed can be changed by a subsequent deed from the same grantor. Hence, he who, in a trial in ejectment, claims title against an elder patent, must show a perfect title from a paramount source of proprietorship, which did not require presentation to the board of land-commission for confirmation under the act of Congress of 1851. An inchoate or imperfect title is insufficient. (De Arguello v. Greer, 26 Cal.; Seale v. Ford, 29 Cal.)

I do not consider the grant of the plaintiff's patent a perfect title under the Mexican government. It appears to have been issued in

181 August, 1835, to the widow of Mariano Castro, deceased. It is true that is shows, as well as the expediente, that the husband of the grantee had had possession of the ranch for more than thirty years before, and the expediente also shows that during that time contestations had taken place between himself and others claiming portions of it. In these respects the grant resembles the grant of the Pulgas ranch, made also in 1835. That, like this, referred to an original, commencing in 1795, by José Arguello, and continuing until 1820, when his son Luis claimed to have obtained from Spain a grant for the ranch, under which he occupied until his death, in 1830; and the alleged grant being, as was said, lost, the Mexican government issued a grant to his heirs. In this also, as in that, no grant was shown from Spain. The record only shows the grant of the Mexican government in 1835, in which it is recited that it is made in revalidacion of a former grant from Spain. But this former grant being only, as appears by the records which have come down to us, a mere license or permission to occupy, was not translative of title. It ceased upon the death of Castro, if it had not before, when Mexico declared her independence of Spain. (United States v. De Haro's heirs, 5 Wallace.)

The decree of August, 1835, is therefore the only grant which transferred a title to the land. But this has none of the characteristics
182 of a definitive grant. It is only intended as a testimonial of the expediente of the grant for the protection of the petitioners, like the decree of the 26th November, 1835, in the Las Pulgas title. The quantity claimed in the petition is four square leagues, as shown on the diseño, within the boundaries of the Llagas and the Linares hill, the San Ysidro, the Brea, and the sierra. It is a grant of quantity within these specific boundaries; but the boundaries themselves are uncertain and undefined, and the quantity within them unascertained. As was said by the Supreme Court of the United States of the Coppinger grant, a sierra might be sufficiently definitive as the boundary of a State or kingdom, but it is too vague and uncertain for a survey of land. And the lines of the Llagas, the San Ysidro, and the Brea are also uncertain until actually surveyed.

Moreover, the grant had never received the sanction of the departmental assembly, nor had it been completed by juridical possession. All these things were necessary to constitute a perfect title under the Mexican government. Until approval by the departmental assembly, the grant issued by the governor was subject to be defeated. The approval gave it definitive validity as a grant, and then juridical possession had to follow to locate the quantity conveyed and give
183 it precision. The land granted was not considered as segregated from the public domain until this was done. When done, the record of the title was finished, and the title itself was complete and perfect. While any of them remained undone it was imperfect; and if the United States, as the successor of Mexico, found a title in this condition, it had to do, under its legislation, the acts necessary to be done to invest the claimant with the entire legal title. If there was no approval of the departmental assembly, it had to decide upon the validity of the grant. If there was no juridical possession, it had to make a location and survey of the land granted. I therefore think that the grant of the plaintiff's patent was not a perfect title under the government of Mexico, but one of those inchoate and imperfect grants which needed confirmation and location by the Government of the United States, and that the defendants' patent, being prior in point of time to the patent under

which the plaintiffs' claim, is the better title, and must prevail in this action.

Let judgment be entered for the defendants.

S. B. McKEE, *Judge.*

And ordered judgment to be entered for defendants, and judgment was so entered; whereupon, the said plaintiff, on the 11th day of May 1869, served upon the attorneys of said defendants a notice of
184 their intention to move for a new trial of said cause, and filed the original of said notice in said cause on the 12th day of May, 1869.

That said plaintiffs, in their said notice of motion for a new trial of said cause, specified as the grounds of their said motion the following:

1st. The insufficiency of the evidence to justify the decision of the court, and that said decision is against law.

2d. Errors in law occurring at the trial of said cause, and excepted to by the said plaintiffs at the time.

Whereupon by agreement and written stipulation of counsel, made in open court, on the 12th day of May, 1869, it was ordered by said court, that plaintiffs should have forty days from and after the 12th day of May, 1869, to file their statement on motion for a new trial in said cause, and that all proceedings in said cause should be stayed until said motion should be heard and determined.

The foregoing statement contains a full, true, and correct statement of all the evidence, oral and documentary, offered or given by either of the parties to said action upon the trial thereof; and said plaintiffs, upon said statement, move the court to grant them a new trial of said cause upon the grounds following, to wit:

185 1st. Insufficiency of the evidence to justify the decision of the court, and because the decision of the court is against law.

2d. Errors in law occurring at the trial of said cause, and which were excepted to at the time by said plaintiffs.

And said plaintiffs specify that the evidence in said cause is insufficient to justify the decision of the court in this, viz:

It is shown by the evidence that the claim and equitable right of said plaintiffs to the premises in controversy are prior in point of time and superior to any right of the defendants or any or either of them thereto.

It is shown by the evidence in the cause that the original Spanish and Mexican grants, under which the plaintiffs derive title to the premises in question, were of prior date to the alleged license by the Mexican government to the grantors of defendants to occupy the land in controversy.

It is shown by the evidence that the original grant of Las Animas by the Spanish government originated in 1802, and was revalidated and confirmed by the Mexican government in 1835, and that the premises in controversy are part and parcel of the tract so granted; while the alleged license to occupy Solis, which is the foundation of said defendants' claim, the Mexican government, in 1835, refused to carry into a grant, and refused to issue to the claimant of Solis a grant for
186 the premises in question, upon the ground that the same was a part of the rancho Las Animas, which had been previously granted to Mariano Castro, (grantee of Las Animas,) and which the said Mariano Castro (grantee of Las Animas) had occupied and possessed for more than twenty years prior to the year 1835.

It is shown by the evidence that the title of said plaintiffs to the land in question is founded upon a valid Spanish grant, made to Mariano

Castro, which was, after his death, confirmed by the Mexican government to his widow and children, and which has been finally confirmed by the tribunals of the United States as a valid and genuine grant, and has been by said tribunals finally located so as to include the premises in question, under and in pursuance of the act of Congress of the United States entitled "An act to amend an act entitled 'An act to define and regulate the jurisdiction of the district courts of the United States in California in regard to the survey and location of confirmed private land-claims,'" approved June 14th, 1860, while it is proved by the testimony in the cause that the confirmation of Solis to the parties under whom the defendants derive their alleged title is not founded upon any grant or prior possession, but upon false and fraudulent translations of documents filed in the United States land-commission as the
187 basis of their claim; by which said false and fraudulent translations the said confirmees of Solis represented that to be a grant, which in point of fact was a refusal of a grant.

It is shown by the evidence that the confirmation by the tribunals of the United States to the confirmees of Las Animas was founded upon valid and genuine grants, while it was proved that the confirmation of the Solis to the confirmees thereof was based upon false and fraudulent translations of Spanish documents, filed in support of their claim before the board of United States land-commissioners.

It is shown by the evidence that the confirmation, survey, and patent, under which defendants claim title, were based upon no grant or equity derived either from the Spanish or Mexican governments.

It is shown by the evidence that the plaintiffs have the older and better right and title to the land in controversy.

It is shown by the evidence that the claim for Las Animas was presented for confirmation and was confirmed by the tribunals of the United States, thereunto duly authorized and empowered, before the claim for Solis was presented and confirmed by said tribunals.

It is shown by the evidence in this case that John H. Moore, the grantor of the defendants, intervened in the district court of the
188 United States in the proceedings had therein relative to the survey and location of the Las Animas rancho.

And said plaintiffs specify as errors of law committed by the court as follows, to wit:

1st. In holding and deciding that the plaintiffs are not third parties, and that they are concluded by the confirmation, survey, and patent for Solis, under which defendants claim title.

2d. In holding and deciding that the interests of the plaintiffs were affected by the confirmation, survey, and patent under which the defendants claim title.

3d. In holding and deciding that in all cases in actions of ejectment the older patent must prevail.

4th. In holding and deciding that, where there are conflicting patents, the court cannot, in an action of ejectment, look behind the patents or inquire into the equities of the respective patentees, but that the elder patent must prevail.

5th. In holding and deciding in this case, there being conflicting patents to the same land, that the court could not look behind the patents and ascertain which party had the prior equity, and attach such prior equity to the legal title, and give effect to such legal title as of the date of such prior equity.

6th. The plaintiffs claim under a survey made and finally ap-
189 proved under the act of June 14th, 1860, which has the force and

effect of a patent. The court erred in holding and deciding that said approved survey did not relate back to the date of the presentation of the plaintiffs' claim before the United States land-commission, and take effect from that date. And the court further erred in holding that said approved survey did not relate back to the inception of the right and title under which the plaintiffs claim, to wit, the year A. D. 1802.

7th. Error in holding that the grant for Las Animas, under which the plaintiffs derive title, is not a perfect title.

THORNTON & WILLIAMS, AND
S. O. HOUGHTON.

Stipulation submitting motion for new trial.

[Title of court and cause.]

It is hereby stipulated and agreed that the foregoing statement on motion for a new trial is correct, as settled and agreed upon by the attorneys of the parties to said cause. And it is agreed that all documents referred to in said statement as documents to be inserted therein shall be considered and treated as forming a part of said state-
190 ment, and shall be set out in full in the statement on motion for a new trial and in the transcript on appeal to the supreme court of said State in case of an appeal of said cause to said court.

THORNTON & WILLIAMS, AND
S. O. HOUGHTON,
Attorneys for Plaintiffs.
L. ARCHER,
Attorney for Defendants for whom Campbell and Archer answered.

Filed June 21st, 1869.

JNO. B. HEWSON, *Clerk.*
By U E SQUIRES, *Deputy.*

Notice of appeal.

[Title of court and cause.]

You will please take notice that the plaintiffs in the above-entitled action hereby appeal to the supreme court of this State from the judgment therein made and entered in the said district court on the 11th day of May, A. D. 1869, in favor of the defendants in said action, and against said plaintiffs, and from the whole thereof; and also from the order made in said cause on the 23d day of September, 1869, denying the motion of *defendants* [plaintiffs] for a new trial thereof.

Dated this 3d day of November, A. D. 1869.

Yours, etc.,

THORNTON & WILLIAMS, AND
S. O. HOUGHTON,
Attorneys for Plaintiffs.

191 To the clerk of said district court, and L. Archer, attorney for defendants.

Received a copy of the within this 6th day of November, 1869—this the original having been first duly filed.

L. ARCHER,
Attorney for Defendants.

Filed this 6th day of November, 1869.

JNO. B. HEWSON, *Clerk.*
By U. E. SQUIRES, *Deputy.*

Certificate to transcript.

[Title of court and cause.]

I, John B. Hewson, county clerk, and ex officio clerk of the district court of the third judicial district of the State of California in and for the county of Santa Clara, do hereby certify the foregoing transcript on appeal to be correct, and that the papers and orders therein contained are true, full, and correct copies of their originals, now on file and of record in said court in said case, and that the several maps annexed to the original transcript in this case are correct trace-copies of the ones used in evidence upon the trial of the said cause, and which are attached to the statement on motion for a new trial herein.

192 And I further certify that an undertaking on appeal in due form, conditioned according to the statute in such cases provided, and in double the amount of the judgment herein, and for the payment of costs on appeal, was filed by said appellants within the statutory time in said cause, and that no exceptions to the same have been filed.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court, this 23d day of December, A. D. 1869.

[SEAL.] JNO. B. HEWSON, *Clerk.*

[Five-cent revenue stamp canceled.]

193 *Opinion of the court.*

MILLER *vs.* DALE. } No. 2346.

This is an action of ejectment for a tract of land in Santa Clara County. By their pleadings both the plaintiffs and the defendants claim to be owners of the land in fee. From the record it appears that on the 5th day of July, 1802, by petition of that date addressed to the viceroy of Mexico, Mariano Castro, who was then in Mexico, requested permission to settle on a tract of land in the jurisdiction of Monterey, in the Californias, known as La Brea. The viceroy referred the petition to the royal tribunal of accounts and the fiscal of the royal treasury, who reported favorably, and on the 17th of August the viceroy granted the permission. On his arrival in California Castro solicited possession of the tract from the commandant at Monterey, and then from the governor, Arrillaga. The priests of the mission of San Juan Bautista opposed his settlement, and so far as appears, he never acquired possession of the tract. At some time prior to the 30th of July, 1804, as appears by a letter from Castro, the viceroy revoked his license for La Brea, and directed him to select another tract of land instead of it. On the 3d of July, 1808, he solicited from the commandant at Monterey the tract of land known as El Carneadero, and since known as Las Animas. The priests of the mission opposed his settlement upon this tract also,

194 claiming that it, as well as La Brea, was necessary for the support of the mission. Whether this petition was granted or not does not appear from the record. Castro died prior to 1829. On the 21st of June, 1833, his widow, Maria Josefa Romera, in a petition to the governor, represented that her late husband had taken possession of the tract called Las Animas in 1806, but that she had not the title-papers, and she therefore asked that a patent be issued to her to establish

her right. On the 20th of June, 1835, Carlos Castro, as attorney for the widow, again petitioned the governor on her behalf for a revalidation of the title to her, representing that the tract Las Animas had been granted by the viceroy to Mariano Castro in 1831, that he took possession in 1809, but that his ranch-house had been burned up, and he had lost all his title-deeds. Upon the receipt of this petition, the governor ordered search to be made for the record of the concession. An examination of the records disclosed the existence of seventeen documents relating to the matter, among which were found the petition of Castro to the viceroy, the reports of the officers to whom it was referred, the order of the viceroy, and the reports of parties to whom the matter of possession was referred by the governor; all of which documents are set out in full in the transcript. On the 7th of August, 1835, the governor made an order of which the following is a copy: "Monterey, August 7th,

1835. In accordance with the petition of Carlos Castro, attorney for
195 the widow Josefa Romera, as the representative of the will and estate of her departed husband, Mariano Castro, soliciting the revalidation of the titles of fee (titulos propiedad) to the rancho Las Animas, which they possess in public notoriety further back than twenty years, in view of the evidence which this expediente affords, by which is accredited the right of Mariano Castro to the tract of Las Animas granted to him by the vice-royal government under the name of sitios called de la Brea, according to the patent of the 17th of August, 1802, let a testimonial be issued of this expediente for the protection of the parties. And whereas the boundaries to which they must confine themselves (the parties in interest) are not expressly defined, those set forth in the plot presented by the attorney, Carlos Castro, shall in future be known as such, leaving uninjured the right of any third party who may consider himself aggrieved by this proceeding." On the 5th of April, 1852, one Sanchez, who had succeeded to the rights of the widow Romero and her children, presented his petition to the board of land commissioners for the confirmation to him of Las Animas. On the 14th of February, 1854, the board confirmed his claim, and on the 26th of January, 1859, the claim was finally confirmed by the district court. A survey of the rancho was made in 1859, which was returned into the district court, and in December of that year objections to the survey

196 were filed by the confirmee. In October, 1860, that court issued its monition requiring all parties in interest to intervene for the protection of their rights, and on the 26th of January, 1864, made an order setting aside the survey and directing a new one to be made. Among the parties who intervened was John H. Moore, the grantor of defendants, who intervened as a part owner of the rancho San Ysidro, part of which was embraced in the survey of Las Animas. A new survey was made by the surveyor-general, which was approved by the district court in June, 1865, and by the circuit court on appeal, in September, 1866. No patent appears yet to have been issued for this claim.

On the part of the defendants it appears that on the 27th of February, 1831, Macario Castro petitioned the then governor of California for the privilege of occupying the tract of land called El Solis, and that the governor on the same day granted his petition. Under this license he entered into the possession of the tract, and the possession was maintained by himself and family till the acquisition of the country by the United States. On the 2d of March, 1853, the widow and children of Macario Castro filed their petition for the confirmation of their claim to the rancho El Solis, alleging continued occupancy for more than twenty years. On the 4th of December, 1855, the board of land-commissioners con-

firmed the claim, and on the 24th of March, 1857, it was finally con-
197 firmed by the district court. On the 18th of January, 1859, the United States issued its patent for the land to the claimants.

The land in controversy is embraced within the calls of the El Solis patent and of the Las Animas approved survey.

The plaintiffs own the Las Animas title, and the defendants the El Solis title.

Upon these facts we do not think the plaintiffs can maintain their action.

1. It is not claimed that there was a perfect title to the tract known as Las Animas under the Mexican government, and if such a claim were made it is manifest that it could not be maintained. Mariano Castro obtained from the viceroy, in 1802, a license to occupy La Brea, but failing to obtain possession of that tract he presented a petition to the commandant of Monterey for leave to occupy El Carneadero, afterwards called Las Animas. He entered into possession of the last named tract, but the record fails to show that he ever received any grant or license therefor prior to 1835. The order of the governor of August 7th, 1835, purports only to be a revalidation of former titles, and not a new grant. The titles revalidated which are set out as part of that expediente show only the license to occupy La Brea, and the petition for license to occupy El Carneadero and the fact of actual occupancy of the last-named tract. It is doubtful, therefore, if that order had any other or greater effect than to give to the widow and children of
198 Mariano Castro the license which he sought from the commandant, but, so far as appears, failed to obtain. But if that order is to be treated as a grant of the land, still it had none of the characteristics of a perfect grant. It created only an imperfect and inchoate title. In the petition four square leagues, a little more or less, were asked for, but within wholly indefinite and uncertain boundaries. Moreover, it was never approved by the departmental assembly, nor was juridical possession of the land given, both of which were necessary to a definite grant.

2. The plaintiffs' approved survey is not the equivalent of a patent. It could not have the force and effect of a patent, unless such force and effect were given to it by express statutory enactment. The survey of Las Animas was filed June 6th, 1865, and was approved by the district court June 10th, 1865, and by the circuit court on appeal September 7th, 1866. All the proceedings for its approval were had under the provisions of the act of Congress entitled "An act to expedite the settlement of titles to lands in the State of California," approved July 1st, 1864. This act repeals the act of June 14th, 1860, and does not declare that a survey approved by the courts shall have the effect of a patent. The act of 1860 provided that the surveyor-general should give notice by publication for four weeks whenever a private land-claim had been surveyed and a plat of the survey made, and that during
199 that time the plat should remain in his office subject to inspection. Any party in interest objecting to the survey might apply to the district court to have the survey brought into court; and the court was authorized in such case to hear testimony, and upon the hearing to correct and modify the survey, or to set it aside and order a new one to be made. The fifth section of the act provided that "the plat and survey so finally determined by publication, order or decree, as the case may be, shall have the same effect and validity in law as if a patent for the land so surveyed had been issued by the United States."

It was held by this court in Seale vs. Ford, (29 Cal., 106,) and in Bernal

vs. Lynch, (36 Cal., 144,) that this language made all surveys finally determined under the provisions of the act equivalent to patents. If that be its true construction, it is clear that the effect given to the surveys did not depend upon the fact that they were finally determined by the order or decree of the court, for when so determined they had no other or greater effect than when finally determined by the publication of notice.

In this case we are not called upon to express any opinion upon the construction to be given to this language, for, as we have already seen, the plaintiff's survey was made and approved under the act of 1864, which is silent as to the character and effect it is to have.

200 3. At the time of the acquisition of California the title to the land in controversy was in the Mexican government, and passed by the treaty to the United States. Neither the claimants of Las Animas nor those of El Solis had more than an equitable claim, for the recognition and confirmation of which they were required to look to the bounty and justice of the new government. In this condition of the titles the parties presented their respective claims for confirmation to the board of land-commissioners, by which they were allowed and confirmed. Other proceedings were then had, resulting on the part of the claimants of El Solis in a patent, by which the United States passed to them all its title to the land.

This title must prevail, unless the plaintiffs are "third persons," within the meaning of the act of Congress of 1851, against whose interest the final confirmation and patent of the government are not conclusive.

The third persons there referred to, and whose rights are saved, are only those who have such claim of title that they could, under the stipulations of the treaty of Guadalupe Hidalgo and the law of nations, withtand the Government if it were claiming the lands for itself. Their laim of title must be such as addresses itself to the judicial consideation of the Government. They must be in a position to demand as a ight, and not compelled to ask as a favor. It has been so expressly held by this court in many cases. Thus in Waterman vs. Smith,

201 (13 Cal., 420,) Field, J., delivering the opinion, it is said: "The third persons against whose interests, by the 15th section of the act of 1871, the final confirmation and patent are not conclusive, are those whose title is at the time such as to enable them to resist successfully any action of the Government in respect to it."

In Teschemacher vs. Thompson (18 Cal., 27) the same learned judge said: "The third persons against whose interest the action of the Government and patent are not conclusive under the fifteenth section of the act of March 3d, 1851, are those whose title accrued before the duty of the Government and its right under the treaty attached."

So in Leese vs. Clark (18 Cal., 572) it said: "The third persons, within the meaning of the section referred to, who can controvert the location of a grant upon which a patent has issued, are those whose title to the premises patented not only accrued before the duty of the Government and its rights under the treaty attached, but whose title to such premises was at that date such as to enable them to resist successfully any subsequent action of the Government affecting it."

In Leese vs. Clark (20 Cal., 425) it is said: "The term 'third persons' refers not to all persons other than the United States and the claimants, but to those who hold independent titles arising previous to

202 the acquisition of the country. The latter class are not bound by the decree and patent, for they do not hold in subordination to the Government nor by any title subsequent, but by title arising anterior to the conquest."

In Minturn vs. Broder (23 Cal., 669) the court say: "The interests of third persons that remained unaffected by the final confirmation and patent are those subsisting in perfect titles derived from a source of paramount proprietorship, which should be used in resisting successfully any action of the Government respecting them."

In the case of De Arguello vs. Greer, (26 Cal., 626,) these cases are cited and approved. The court there say: "These cases must be regarded as having settled the construction, so far as the courts of this State are concerned, to be given to this section of the act of Congress. If Coppinger's heirs and successors in interest have an interest in the land in controversy of a character that could be used in resisting successfully any action of the Government respecting it, then they have a status in the case which entitles them to the relief they have sought, otherwise they are not in a position to complain of the action of the Government, on whose bounty and justice they have depended for the confirmation of their claim to the Cañada de Raimundo."

It is obvious, we think, that the plaintiffs are not "third persons" within the rule laid down in the above-cited cases.

203 4. It is claimed by the appellants that the confirmation of the rancho El Solis, which resulted in the issuing of a patent therefor, was obtained by the introduction and use of certain false and fraudulent evidence. If this be so, it is a matter which cannot be inquired into in this action. The board of land-commissioners and the district court having acquired jurisdiction of the subject-matter, the validity of the claim presented, and whether it was entitled to confirmation, were matters for their determination, and their decision, however erroneous, cannot here be called in question, on the ground that they were rendered upon fraudulent or insufficient evidence. (Beard vs. Federy, 3 Wall., 489; Bernal vs. Lynch, 36 Cal., 143.) It is a matter of no moment, therefore, so far as this case is concerned, whether correct or incorrect translations were used. The patent is a record of the Government, which cannot be assailed in this way. Speaking of a patent, in Leese vs. Clark, (18 Cal., 572,) the court say: "This instrument, as we have stated, is the record of the Government upon the title of the patentee to the land described therein, declaring the validity of that title, and that it rightfully attaches to the land. Upon all the matters of fact and law essential to authorize its issuance it imports absolute verity, and it can only be vacated and set aside by direct proceedings instituted by the Government, or by parties acting in the name and by the authority of the Government. Until thus vacated, it is con-

204 clusive, not only as between the patentee and the Government, but between parties claiming in privity with either by title subsequent."

Similar language was used by the Supreme Court of the United States in Beard vs. Federy, supra. Mr. Justice Field, in delivering the opinion of the court, said: "When informed by the action of its tribunals and officers that a claim asserted is valid and entitled to recognition, the Government acts and issues its patent to the claimant. This instrument is, therefore, record evidence of the action of the Government upon the title of the claimant. By it the Government declares that the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former Government, and is correctly located now so as to embrace the premises as they are surveyed and described and against the Government this record, as long as it remains unvacated

is conclusive; as it is equally conclusive against parties claiming under the Government by title subsequent."

Upon the whole case the judgment and order must be affirmed, and it is so ordered.

BELCHER, *J.*

We concur:

RHODES, *J.*
NILES, *J.*

I am unable to agree with a majority of the court, and will hereafter file a written opinion expressing my views of the questions involved in this case.

CROCKETT, *J.*

205 The chief justice, being interested in the action, did not participate in the decision.

In the supreme court of the State of California, October term, A. D. 1872.

HENRY MILLER ET AL., APPELLANTS,
vs.
GEORGE W. DALE ET AL., RESPONDENTS.

On appeal from the district court of the third judicial district in and for the county of Santa Clara.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and the premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Belcher, J., Rhodes, J., and Niles, J., concurring, Crockett, J., dissenting, to the effect that the judgment and order of the court below be affirmed.

Whereupon it is now considered, ordered, adjudged, and decreed
206 by the court here that the judgment and order of the district court of the third judicial district in and for the county of Santa Clara, in the above-entitled cause, be and the same is hereby affirmed.

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the foregoing 206 pages contain a full, true, and correct copy of the transcript on file, opinion rendered, and judgment entered in the foregoing entitled action, on appeal from said third district court to this court.

Witness my hand and the seal of said court, this 18th day of April, 1874.

[SEAL.]

GRANT I. TAGGART,
Clerk Supreme Court, Cal'a.

(Indorsement on cover:) No. 185. Henry Miller, Thomas Rea, and James P. Sergeant, plffs. in error, vs. George W. Dale, Geo. Anson, D. C. Riddle, et al. California sup. court. Filed 3rd June, 1874.

No.....

IN THE SUPREME COURT

OF THE

United States.

MILLER, ET ALS.,

Against

DALE, ET ALS.

Brief for Plaintiffs.

S. O. HOUGHTON
AND
JOHN REYNOLDS, } *For Plaintiffs.*

SAN JOSE:
COTTLE & WRIGHT, PRINTERS, 314 MARKET STREET.
1876.

IN THE SUPREME COURT

OF THE

UNITED STATES.

MILLER, ET ALS.,
Plaintiffs in Error,
vs.
DALE, ET ALS.,
Defendants in Error.

BRIEF FOR PLAINTIFFS.

STATEMENT OF THE CASE.

This action is ejectment, instituted to recover the possession of a tract of land in California, part of the Rancho Las Animas, containing five thousand one hundred and forty-one acres.

Both parties claim title to the tract in question, under grants made before the cession of California to the United States.

The title of plaintiff is as follows: By his petition dated July 5th, 1802, Mariano Castro solicited permission of the Viceroy of Mexico to settle on the tract of land in California called La Brea. Fol. 52–55.

This petition was referred to the Royal Tribunal of Accounts, and the Fiscal of the Royal Treasury, who made favorable reports, (fol. 55–58,) and the Viceroy, on the 17th of August, 1802, granted permission to said Mariano Castro to proceed and settle with his family on said tract. Fol. 58–59.

Soon thereafter said Castro settled upon that part of La Brea known as El Carnadero, and now known as Las Animas, and kept thereon cattle and horses, and planted and sowed portions of it. He continued to occupy the land until he died, which was some time previous to 1829. Fol. 29.

After his death his widow, Maria Josefa Romero, by her petition dated June 21st, 1833, to the then Governor of California, represented to him that her deceased husband had taken possession of the tract called Las Animas in 1806, by virtue of a concession made when Arrillaga was Governor; that she had not the title deeds in her possession, &c., and asked that a patent be issued to establish her right.

On the 24th of June, 1833, Governor Figueroa

ordered that the expediente be searched for, and the testimonial prayed for issued at her expense. Fol. 44.

This petition was followed by another from said widow by her attorney in fact Carlos Castro, dated June 20th, 1835, representing that the evidences of her deceased husband's title had been destroyed by fire, &c., and asking that a new title be issued in confirmation of the previous grant. This petition was accompanied by a plat of Las Animas, and described it "as adjoining with the rancho of San Francisco de las Llagas, as far as the Lomita de la Linares, with the rancho de San Isidro, with that of La Brea belonging to San Juan Bautista, and the Sierra as shown on the plat."

Whereupon the Governor ordered search to be made for the expediente of said concession and a report thereon. Fol. 45, 46.

A report was made July 30th, 1835, containing a synopsis of the contents of the papers found in the archives of the territory relating to said Castro title, which was annexed to a certified copy of the originals, (fol. 46–51,) said documents being marked "I Testimonio," fol. 44–105,) attached to which is a copy of the diseño presented by Carlos Castro and the testimonial, or confirmatory

grant, made by Governor Figueroa, dated August 7th, 1835, by which he recognizes the right of Mariano Castro under the Vice Royal grant of 1802 to Las Animas, granted to him under the name of La Brea, and prescribes that the boundaries of said rancho shall be those shown upon the diseño or plat presented by Carlos Castro, attorney for the widow, (fol. 103,) which is the exhibit marked "Disñeo de Las Animas."

The claim for Las Animas was presented for confirmation, April 5th, 1852, to the Board of Commissioners created by the act of Congress of March 3d, 1851, entitled "An act to ascertain and settle private land claims in the State of California," (fol. 106–110,) and was confirmed by said Board Feb. 14th, 1854, (fol. 112,) which decree was affirmed on appeal by the District Court May 17th, 1856, (fol. 114,) and the confirmation was made final on the 26th of January, 1857. Fol. 116.

The Surveyor General of the United States for California made a survey of said rancho in 1858, which did not include the land in controversy, and on the 12th of July, 1859, an order was made by the District Court that said survey be returned into Court--said survey being shown by the exhibit marked "Plat referred to as official survey in No. 17, order setting aside survey of Las Animas."

December 6th, 1859, claimants filed exceptions to said survey. Fol. 120, 121.

October 8th, 1860, claimants filed further objections and exceptions thereto. Fol. 118, 119.

October 4th, 1860, John H. Moore, among others, intervened in the matter of said survey, (fol. 122,) and filed exceptions thereto. Fol. 127.

Exceptions were also filed to such survey by the United States. Fol. 129.

January 26th, 1864, an order was made by said District Court, setting aside said survey, and directing a modification thereof in accordance with the specific directions of said decree. Fol. 131.

A re-survey was made and approved by said Court, by decree dated June 10th, 1865, (fol. 133,) and on appeal, the Circuit Court by its decree dated Sept. 7th, 1866, finally affirmed the decree of the District Court, approving said survey. Fol. 136.

The plat of said survey is the exhibit marked "18. Plat of Las Animas attached to decree of District Court."

The premises in question are embraced within said survey of Las Animas, and are shown on "Exhibit A. S." by the lines shaded brown. Fol. 33–*.

* The original map has the lines shaded in green.

The plaintiffs are the owners of an undivided three-fourths of Las Animas. Fol. 28, 29.

The title claimed by the defendants is as follows:

[NOTE.—The original claimant of Solis was Mariano Macario Castro, and he of Las Animas Mariano Castro. (Fol. 29.) To distinguish them we designate the Solis Castro as Macario.]

On the 21st of February, 1831, Macario Castro presented his petition to the Governor of California, soliciting a provisional grant of the place called "Joaquin Solis," (fol. 160,) and on the 27th of the same month the Governor, Manuel Victoria, granted him permission to occupy provisionally the place asked for. Fol. 161.

On the 31st of May, 1833, said Macario Castro presented a further petition to Governor Figueroa asking that El Solis be granted to him in fee. Fol. 156.

This petition was successively referred to the Ayuntamiento of Monterey, and the Committee on Colonization and Vacant Lands of the Territorial Assembly, (fol. 157.) and on the 20th of July, 1833, the latter committee reported that the part of the land that did not belong to Las Animas might be granted. Fol. 162.

On the 21st of November, 1833, an order was made by the Governor, that said Castro should

show within fifteen days that said land he asked for did not belong to Las Animas, and on the 30th of January, 1834, a further order was made by the Governor that said Macario Castro should prove within fifteen days from that date that the land solicited by him did not belong to Las Animas. Of which last order said Castro was notified on the next day. Fol. 158, 159.

The correct translation of the order last mentioned is marked "Ex. B." Fol. 41.

On the 8th of August, 1835, the Governor made a further order in which, after reciting that the time limited by the two preceding orders for making proofs that the land petitioned for did not belong to Las Animas having expired, he orders that the expediente be concluded and filed in the archives, (fol. 42,) and no further proceedings were had upon the petition for a grant in fee of Solis.

The claim for Solis was presented for confirmation to the Land Commission March 2d, 1853, (fol. 148, 149,) and was confirmed December 4th, 1855, (fol. 150,) and finally confirmed by the District Court, March 24th, 1857. Fol. 153.

Solis was finally located by the Surveyor General of the United States for California, April 3d, 1858, and a patent therefor was issued January 18th, 1859. Fol. 137–146.

The patent for Solis includes the premises in controversy. "Ex. A. S."

The defendants are the owners of the Solis rancho, and were in possession of the premises in controversy when this action was commenced. Fol. 31.

The defendants derive title to Solis from John H. Moore, who was a party to the proceedings before the District Court in the matter of the survey and location of Las Animas, said Moore having been the owner of Solis at that time. Fol. 35.

No findings were made by the Court of original jurisdiction.

Judgment was there rendered for defendants.

The plaintiffs moved for a new trial upon a statement of the case, (fol. 23–190.) which motion was denied. Fol. 22.

The plaintiffs appealed from the judgment and order to the Supreme Court of California, where the cause was heard upon the whole record, and the judgment and order of the District Court were affirmed. Fol. 204.

The case comes to this Court on a writ of error.

ASSIGNMENT OF ERRORS.

The plaintiffs assign as errors the following, to-wit:

1—In holding and deciding that the title of the plaintiff is insufficient to entitle them to maintain this action.

2—In holding and deciding that the plaintiffs are not third persons, and that they are concluded by the Solis patent, under which the defendants claim title.

3—In holding and deciding that the title of defendants is paramount and superior to that of the plaintiffs, and that by said Solis patent the fee of the lands in question passed from the Government, and vested in the grantees therein.

4—In holding and deciding that in actions at law, the Courts cannot go behind a patent, and that the remedy of the plaintiffs, if any, is in equity.

5—In holding and deciding that the final survey and location of Las Animas was under and pursuant to the act of Congress of July 1st, 1864, and not under the act of June 14th, 1860.

6—In holding and deciding that the defendants are not concluded by the decree approving the survey and location of Las Animas.

ARGUMENT.

I.

The survey and final location of Las Animas was made under the Act of June 14th, 1860, and not under the Act of July 1st, 1864.

Previous to the passage of the Act of June 14th, 1860, the survey of that rancho had been made and ordered into the District Court of the United States, where it was pending on objections thereto, made by the claimants of said rancho.

The 6th section of the Act referred to conferred jurisdiction upon the District Court over surveys previously returned thereto, or pending therein.

12 Stat. at Large, p 34, Sec. 6,

And such jurisdiction has been recognized and affirmed by this Court. In the United States vs. Halleck, 1 Wal. 454, it was held that "Whatever question might be raised as to the jurisdiction of the District Court to supervise the survey previous to that Act, there can be none since its passage. That Act applies not merely to surveys subsequently made, but also to such surveys as had been previously made, and approved by the Surveyor-General, and returned into the District Court upon objections to their correctness."

After the passage of that Act, a monition was issued, notifying all parties having, or claiming to have an interest in the survey and location of Las Animas to appear before said Court on a day therein specified, then and there to intervene for the protection of such interest, or their defaults would be taken. The notice prescribed, was given, and the monition returned, and on the return day thereof, to wit, October 3d, 1860, proclamation was made in said Court that all parties having or claiming to have an interest in the survey and location of said claim, should appear and intervene for the protection of such interest. Whereupon the claimants, the United States, the grantor of defendants, and divers other parties, appeared by their respective counsel, and were allowed five days to make a showing of their rights to intervene, and the defaults of all parties not appearing was then entered. Fol. 123–126.

The claimants of Las Animas, the claimant of Solis, John H. Moore, and the United States, all became parties to said proceedings, all of whom filed objections to said survey and alleged the same to be erroneous. Fols. 118–120–127–128.

On the 26th of January, 1864, the District Court made an order setting aside the survey, and ordered a new survey, or more correctly speaking, a modification thereof in accordance with the spe-

cific directions of the decree, and required the same to be returned to the Court for approval. Such survey was made and returned and approved by said Court by decree dated June 10th, 1865, and on appeal the Circuit Court affirmed in all things said decree.

The Supreme Court of California, upon these facts, held that all the proceedings for the approval of said survey were had under the act of July 1st, 1864.

This view is clearly erroneous, the fact being that all the proceedings were had under the act of 1860, excepting only, that an appeal was taken to the Circuit instead of the Supreme Court, as provided by the act of 1864.

II.

The confirmation and location of Las Animas entitles the plaintiff to maintain this action.

The fifth section of the act of June 14th, 1860, provides that surveys finally determined by publication, order or decree, "shall have the same effect and validity in law as if a patent for the land so surveyed had been issued by the United States." The evident meaning of this provision was, that the surveys becoming final under the proceedings prescribed by that act, without the intervention

of the courts should be conclusive, in the same sense that a patent is conclusive upon the question of location, thereby placing the holders of claims so located, upon the same footing with those whose patents had issued.

That act prescribed two modes by which surveys made in accordance with its provisions should become final. If no objection was made after publication, the approval of the Surveyor-General was sufficient, but if objection was made, an adjudication by the Courts became necessary.

The clause in the act to which special reference is made, had no practical application except to such surveys as might become final by publication. Although general in its terms, it added nothing whatever to the conclusive effect of surveys made final by decrees of the Courts, for if that act had contained no such provision, all surveys finally determined and approved by such decrees would have a conclusiveness greater than patents in ordinary cases, because not only the claimants and the United States were concluded thereby, but all others who were, or might, have been parties to the proceedings. And where, as in the case of Las Animas, part of the proceedings were had while the act of 1860 remained in full force, and were completed after the passage of the act of 1864, the decree had the same conclusive effect,

as the power of the Court to proceed and determine judicially the survey, was expressly continued by the latter act.

The confirmation of the Las Animas, and the decree determining the location thereof, is a final adjudication and recognition by the government, of the validity and genuineness of the title of the claimants thereto. and of their right to a confirmation of the same, and the United States is thereby concluded. The confirmation having become final by the decree of a Court of competent jurisdiction, like a final judgment in any other judicial proceeding, it binds the parties to it.

The decree locating the grant so confirmed has "the force and conclusiveness of a judicial determination in a suit *in rem*.

Henshaw vs. Bissell, 18 Wal. 268,

And binds the United States, and all who were or might have made themselves parties to the proceeding. The grantor of the defendants intervened and made himself a party to the proceedings in which the decree was made; he is therefore bound by it, and it is equally binding on the defendants, his grantees. Rodrigues vs The United States, 1 Wal. 591.

In the case of Tredway vs. Semple, 28 Cal. 659, the Court, speaking of surveys made under the

act of June 14th, 1860, says: The proceedings had under this act, after the return of the survey and plat, are strictly judicial in their character; the parties interested have an opportunity to be heard, and those appearing actually are heard, and their rights litigated and adjudicated; and when thus finally determined we see no reason why the matters determined should not like all other judicial determinations upon points directly in issue, be regarded as *res adjudicata*, and be final and conclusive upon the rights of the parties.

Semple vs. Wright, 32 Cal. 667.
Bernal vs. Lynch, 36 *id.* 143–4.
Yates vs. Smith, 38 *id.* 61.
United States vs. Halleck, 1 Wal. 455.
United States vs. Estudillo, *id.* 716.
Bernal vs. Lynch, 9 *id.* 320.

In the case of Las Animas nothing further remains to be done by the United States but to issue a patent as provided by law, the issuance of which would be compelled by the Courts by mandamus were it refused.

The patent in the case of Las Animas, as in other cases, will operate as the deed of the United States, and whatever title vested in the Government by the cession of California will pass thereby to the confirmees, and to their assigns, the plaintiffs, but it will not tend to any extent

whatever to confer upon the plaintiffs any greater or further title as against the defendants than they now have; nor will it give them any greater right as against ~~them~~ defendants to the possession of the land covered by their grant as finally located.

The fact that the defendants have a patent for Solis, does not affect the right of the plaintiffs to assert their claim to that part of Las Animas embraced by the survey of Solis, they being clearly "third persons" and not affected by the confirmation survey or patent of that rancho.

Teschmaker vs. Thompson, 18 Cal. 27.
Rodrigues vs. The United States 1 Wal. 591.
Henshaw vs. Bissell, *supra*.

In California the course of proceedings in ejectment are not according to common law rules. The legal title does not always ~~proceed~~ prevail in ejectment in the Courts of this State, a recovery can be had on a title which gives a legal right to the possession of land.

Ferris vs. Coover, 10 Cal. 618.

Neither the patent for Solis nor the patent for Las Animas, had it been issued, could have any bearing upon the question involved in this case. The rights of both parties must be determined by going behind the patents, and by ascertaining and determining which claim is founded upon the su-

perior right or equity derived from the governments of Spain or Mexico. The defendants can only question the genuineness and priority of the grant of the plaintiffs, or show superior equities in their own favor. They cannot question the correctness of the location of Las Animas, whether the plaintiffs have a patent therefor or not.

The plaintiffs have made all the proofs of their title and right to the possession of the premises in question without a patent, that they could have made had a patent been issued to them, and as their right to the possession of the demanded premises, as against the defendants does not to any extent whatever depend upon a patent, such instrument cannot be necessary to enable them to assert such right.

That the Courts will go behind patents in cases of conflicting claims, is settled by Bissell vs. Henshaw, and there can be no reason why, in cases where the title is equally conclusive, the same course should not be pursued.

III.

The title of the plaintiffs is superior to that claimed by defendants, and entitles them to recover.

The title of the plaintiffs is founded upon the

concession made by the Viceroy in 1802 to Mariano Castro.

The evidence does not show that the right then granted was ever revoked. The only foundation for that conclusion by the Court below, is a letter of Mariano Castro, without address, dated July 30th, 1804, in which he says he was informed that the Viceroy had decided that he must select another tract, &c. This does not prove a revocation. If it has such a tendency it is completely rebutted by other facts. First, that he entered upon that part of the tract now known as Las Animas, cultivated portions of it, had cattle and horses upon it, and lived upon it until his death, and second, by the formal recognition of his rights under that concession by Governor Figueroa in 1835.

The fact that he was the first occupant of the land was so well understood, that no attempt was made on the trial, to controvert the testimony of the single witness for the plaintiffs upon that point. Fol. 29.

That Las Animas has, from a very early period been known as a part of La Brea, is shown by the petition of Castro, dated December 3d, 1803, asking the Governor that he put him in possession of that part of La Brea "from the creek of Pajaro

to the Lomita called La Linares," (fol. 63,) which is the identical tract delineated on the diseño of Las Animas attached to the "Testimonio," (fol. 43,) the same described in the Figueroa grant of August 7th, 1835, and embraced in the final survey of Las Animas.

The question of location, however, is not an open one.

The document issued by Figueroa is not a grant under the colonization laws and regulations of Mexico, but is a formal confirmation and recognition by the Mexican Government, by one of its officers, of a pre-existing right derived from Spain.

When the sovereignty of Spain over California passed to Mexico, the latter under the laws of nations, was bound to protect the inhabitants of that province, in their rights of property acquired from Spain, to the same extent, that the United States is bound to protect the inhabitants of the territory ceded to it by Mexico, in their rights of property derived from Spain and Mexico.

United States vs. Perchman, 7 Pet. 86.

The confirmation by Governor Figueroa of the title of Mariano Castro under the concession made by the Viceroy, must therefore be regarded as a recognition by Mexico, of an existing right in

Castro to Las Animas, when the dominion of Spain over the country ceased, and that of Mexico began.

That Governor Figueroa had power to confirm the title, is settled by the case of The United States vs. Peralta et als., 19 How. 347, in which this court said, "We have frequently decided that the public acts, of public officers, purporting to be exercised in an official capacity, and by public authority, shall not be presumed to be usurped, but that a legitimate authority had been previously given or subsequently ratified."

Las Animas is not a case where a specific quantity is to be taken out of a tract of greater extent, as the confirmatory grant by Figueroa, establishes definite boundaries without regard to quantity. The diseño to which reference is made in that grant, shows that it is bounded on the east, by a stream called Arroyo de las Llagas; on the south by the rancho de La Brea and San Juan Bautista; west by the summit of the Sierra Madre, and north by a line extending west from the Arroya de las Llagas to the Sierra, passing along the south side of the Lomita de la Linares. These boundaries are certain, and can be located on the ground with the greatest precision. It is not essential to a certain description of a tract of land, that its lines be described by course and distance,

a description by abuttals is equally certain. The decree of confirmation directs, that "the said tract is to be located according to the boundaries delineated on the diseño or map on file in the expediente, and referred to in the grant," and is therefore a confirmation of a specific tract, leaving no room for the exercise of any discretion, by the political departments of the government in the matter of the location.

The claim for Solis is not founded upon any right of property existing at the date of the cession of California to the United States. The grant therefor is as follows :

"MONTEREY, Feb. 27th, 1831.

"As long as the party interested shall form works, and shall have the land cultivated that he pretends for, I permit him to occupy the land provisionally as set forth in his petition.

VICTORIA."

The petition of Macario Castro asked only for a provisional grant "of the place called Joaquin Solis," without further description, (fol. 160,) and there is no evidence in the case showing what land was known as Solis, either when the provisional grant was made, or at any other time. The diseño of Solis, attached to the transcript, is that which accompanied the petition for a grant of that rancho, which was refused. Macario Castro is

not shown to have occupied any land under the provisional grant, nor is there any evidence in the case, showing to what land that grant applied.

This provisional permit constitutes the entire title of Macario Castro to Solis, existing at the date of the cession of California. It conferred no right of property, but gave a mere personal privilege to Macario Castro, which ceased at his death. It was not a right which descended to his heirs; it was not intended to pass, and did not pass any interest, or create any estate in the land.

United States vs. De Haro, 5 Wal. 627.

The subsequent proceedings upon the petition of Macario Castro, for a grant of Solis, show that it was refused, because the tract he asked for included a part of Las Animas. The Ayuntamiento of Monterey, to which his petition of May 31st, 1833, was referred, reported that "the land asked for was considered *as belonging to the rancho of Las Animas, called commonly of the Castros, it being their property*," that a grant might be given for that portion of the land which did not pertain to Las Animas; and that he, Macario Castro, should prove by testimony in writing, that the land asked by him, did not belong to that rancho. He was thereupon ordered by the Governor, to produce such proofs, and having failed to comply, the

Governor put an end to the proceedings by the order dated August 8th, 1835. Fol. 42, Exhibit A.

The translation of that order before the Land Commission and the District Court, (fol. 162, "IV,") was grossly erroneous, if not wilfully false, and doubtless had great influence in securing a confirmation of the claim; 1 Hoffman 125, as that translation made it appear, that the proof required was made, when in fact, the proceedings were concluded because of the failure to make such proof.

It is clear that no equities exist in favor of Solis; its recognition by the United States was at most, an act of grace and favor, not an obligation imposed by the treaty with Mexico or the laws of nations.

Las Animas is among the tracts earliest settled in California; it is one of the oldest claims; the rights of its founder were fully recognized by the Mexican authorities, and it was because the petitioner for a grant for Solis, included in his application, the very land in question in this action, that the Governor refused to make a grant to him.

It is submitted that the patent for Solis, as against the plaintiffs, is wholly inoperative, so far as the land in controversy is concerned; that the

title to Las Animas is not only of prior date, but is founded upon superior equities, which should prevail over the claim of defendants.

S. O. HOUGHTON,
JOHN REYNOLDS,
For Plaintiffs in Error.

Service accepted by copy, this ..... *day of*

..... *187*

.....

Attorney for Defendants.

Appeal 1—

In reply to 185

Judge Black's brief

Supreme Court, United States.

MILLER *et als.*, PLAINTIFFS IN ERROR,

v.

DALE *et als.*, DEFENDANTS IN ERROR.

Brief for Plaintiffs in reply.

S. O. HOUGHTON,
JOHN REYNOLDS,
for Plaintiffs.

R. O. Polkinhorn, Printer, Washington, D. C.

SUPREME COURT

OF

THE UNITED STATES.

MILLER ET AL.
vs.
DALE ET AL.

Brief for Plaintiffs, in reply.

I.

It is suggested to the court in the last brief for defendants that a comparison of the diseño, and the approved survey of Las Animas, shows differences in lines, shape, &c.

Las Animas was confirmed to be located "according to the boundaries delineated on the diseño or map on file in the espediente, and referred to in the grant; provided that the said boundaries be located without prejudice to the rights of third persons existing previously to the date of the grant. Trans., fol. 114.

That the approved survey of that rancho is in accordance with the decree of confirmation in all respects, is settled by a final judgment of the court of last resort having jurisdiction of the question, in a proceeding in which that was the issue; to which the claimants and confirmees, the defendants' grantors, and the United States and others were parties.

Under the decisions of this court it was the duty of

the tribunal which adjudicated the question, to locate the land confirmed under the grant of Las Animas in conformity to the decree of confirmation, and the presumption is conclusive that it is so located. The decree approving that survey establishes the fact that it conforms to the diseño, and does not embrace any land covered by any prior grant.

United States vs. Rodriguez, 1 Wall., 588.

II.

It is insisted on behalf of defendants that there has been no final survey under the decree of January 26, 1864.

An examination of that decree (fol. 131, 132) clearly shows that the court had before it full data relative to the location of all the lines of contiguous surveys, as the directions for the final location are given in detail with great particularity and precision.

The great point of objection seems to be, that one line was protracted to meet another line without being traced on the ground.

The testimony of C. Bierlowski fully answers this objection. He says, "I have plotted the land in dispute on a copy of said plat with mathematical certainty. The field-notes of surveys, made under the directions of the Surveyor General of the United States, of confirmed California claims, are never returned into the courts which have to pass on such surveys, but are kept as records in the office of the Surveyor General. I can locate this plat (the map of the approved survey of Las Animas) on the ground with perfect certainty, by the aid of the field-notes of the surveyor of said rancho, which are of record in the office of the Surveyor General. The north line could be protracted with perfect certainty on the ground," &c. fol. 33.

Certainty is all that the law requires.

Craig vs. Radford, 3 Wheat., 596.

Spencer vs. Lapsley, 20 How., 272.

Blunt's Lessee vs. Smith, 7 Wheat., 278.

It is urged that the decree of the district court orders the location to be surveyed, not compiled from data in the office of the Surveyor General, and that such survey has never been made.

The only object to be attained by running lines on the ground is to make a location, by obtaining the proper descriptive calls. If that information was already in the possession of the Surveyor General, and he was able to comply with the directions of the decree of the court without tracing any further lines on the ground, it would have been an idle ceremony, and a useless and expensive formality to do so.

The decree which finally locates Las Animas directs how every line shall be located, and in express terms requires the Surveyor General to return a plat of the survey for the approval of the court; thus showing that the court did not intend or require a new survey, or anything more than a modification of the location, in conformity to its decision. Sec. 4, act of June 14, 1860.

Had it been intended to order a new survey entirely, there would have been no order for its return to the court, as a new survey was subject to the approval of an Executive Department.

III.

Nearly all the arguments offered under Point V, of defendant's last brief would have been appropriately made to Congress in opposition to the act of June 14, 1860. Whatever hardship or injustice may result from it, are not subjects which the court is now called to consider.

The act has been construed, and an effect given it, altogether opposed to the views of counsel for defendants.

The case of Bissell vs. Henshaw disposes of every question presented for decision in this case, excepting only the question, Are the plaintiffs entitled to maintain this action upon their approved survey, without first obtaining a patent ?

That plaintiffs are "third parties," as defined in the United States vs. Rodriguez, 1 Wall., 588, there can be no question.

The confirmatory grant by Governor Figuerra for Las Animas is of the tract shown on the diseño. It is not a grant of quantity to be taken out of a larger area, but of the whole tract, shown on the map and referred to in the grant for description, fol. 103, and the confirmation by the court is of the whole tract. fol. 114.

Such being the nature of the grant for Las Animas, viz, a grant having such descriptive features as to render its identification a matter of certainty, entitles the claimants thereof to the specific tract granted, and that right is not affected in any manner by the issuance of the prior patent for Solis.

Counsel for defendants in their first brief admit that Solis was a floating claim. That such is the fact does not admit of question, for the provisional grant for Solis contains no description whatever, except "the land," &c., "as set forth in his petition." fol. 161. The petition containing no further description than "the place called Joaquin Solis."

The record contains no evidence whatever tending to show to what land the provisional permit to occupy Solis referred. It is not shown that the name "Joaquin Solis" designated any tract of land of definite extent or boundaries.

The diseño, were it evidence of anything, shows no objects or lines, nor has it any descriptive calls susceptible of identification with any degree of certainty. But that diseño proves nothing, as it only purports to show the land, a grant of which was asked, and refused because a part of it belonged to Las Animas.

We repeat here, that but for a fraud practiced upon the court, the Solis claim would not have been confirmed. In the case of the Uuited States vs. De Haro, 5 Wall., 627, it was held that a similar claim was not entitled to confirmation.

Not only was a false translation of a material document imposed on the court, but, as will be seen by reference to the opinion delivered confirming Solis, (1 Hoff., 125,) testimony tending to show that a grant was actually issued was also given. On the trial of this cause no attempt was made to prove a grant pursuant to the petition of May 31, 1833. If any such proof existed, it would doubtless have been offered.

The false translation is found at fol. 162 of the trans., and the correct translation at fol. 42, and is marked "Exhibit A."

During a period of nearly twenty years, the courts of California have held, and it has long been regarded as settled law, that grantees and their assignees, under Spanish and Mexican grants, were entitled to the possession of all the land embraced in their grants, until final action by the government, even though the grants were inchoate.

Under the grant for Las Animas, the plaintiffs had a right to the possession of the tract shown on the diseño, which an inspection shows embraces the land in question, against all persons who had not some prior right derived from Spain or Mexico.

This right we submit was not in any degree impaired by the presentation of that grant for confirmation in obedience to the act of March 3, 1851, on the contrary a compliance with that act, was necessary to, and did preserve it intact, until final action was had thereon.

It is submitted that because the claimants for Solis, without a grant, and through fraud and imposition, in an *ex parte* proceeding, to which the plaintiffs were not and could not make themselves parties, have been so fortunate as to have first obtained final action by the government on their claim, viz: A patent, the plaintiffs have not lost any right to the possession of the land conferred by their grant, it being reserved by the 15th section of the act of March 3, 1857, and the clause inserted in the Solis patent pursuant to that section.

The right of the plaintiffs to recover would rest upon precisely the same evidence had a patent issued, as now, and in consideration of that fact, it is not perceived why a patent should be essential to give them a right of action.

S. O. HOUGHTON,
JOHN REYNOLDS,
For Plaintiffs.

Supreme Court of the United States.

MILLER *et als.*
vs.
DALE *et als.*
No. 185.

WRIT OF ERROR TO SUPREME COURT OF CALIFORNIA.

This was ejectment brought in a State District Court for California, where it was tried without a jury and determined against the plaintiffs. Upon appeal to the Supreme Court of the State the judgment of the court of original jurisdiction was, after a full rehearing, affirmed, whereupon the defendants took this writ of error.

The land in dispute is covered by two interfering surveys. The suit is for the interference, of which the defendants and those under whom they claim have been for a long time in possession. It does not appear exactly how long, but certainly for more than six years before the bringing of the suit.

The title by which the defendants claim to be secure in their possession is recited in their patent, which will be found on page 60 of the record, and is as follows:

1831. Grant to Mariano Castro by Emanuel Victoria, then political chief of California.

2*d March*, 1853. Petition of heirs of grantee to Board of Land Commissioners for confirmation.

4*th December*, 1855. Decision of the Board of Commissioners in favor of the claimants.

1*st May*, 1856. Decree of the Land Commission affirmed by District Court upon appeal.

24*th March*, 1857. Notice having been given by the

Attorney General that the appeal to the Supreme Court would not be prosecuted, an order was made by the District Court authorizing the claimants to proceed under the decree of the District Court, as upon a final decree.

3*d April*, 1858. Survey completed and certified by the Surveyor General of California, and the General Land Office agreeably to act of 1851.

18*th January*, 1859. Patent issued according to the survey, which includes the land in dispute.

Plaintiffs claim a right to the same land, and bring this suit to recover it, by virtne of another title which will be found recited and set forth in the opinion of the court on page 83.

It appears that so early as 1802 an effort was made by one Mariano Castro, (not the same Castro referred to in connection with the other title,) who petitioned the Viceroy for permission to settle on a tract of land in California, the petitioner being at the time in Mexico. The priests of the Mission, as well as other persons to whom the application was referred, opposed any such permission being given. He and his family at various times applied again and again for La Brea Carneadero and Las Animas. No concession were made to Castro or his family of Las Animas, or any tract known by that name until 1835. The concession then made was a mere license to occupy four square leagues, with wholly uncertain and indefinite boundaries.

While it is very clear that the title under which the plaintiffs claim could never have been confirmed or allowed by the United States authority at all, if opposition had been made to it or the appeal prosecuted in this court, we are not now at liberty to prove the truth, inasmuch as the decisions in favor of the claimant by the Land Commission and the District Court has become final, and the license of 1835, imperfect as it was, has been treated as a title by the courts; but it is plain, and the Supreme Court of California in this case has found it to be true, that no title for any land was ever made to Mariano Castro or anybody representing him of an earlier date than 1835.

The fact as stated by the court (p. 85) and shown by the evidence on record is that he got some kind of permission from the commandant of Monterey to occupy a place called La Brea, but never took possession under the license. On the contrary, he did afterwards occupy Carneadero, in spite of the opposition expressed by the military as well as the ecclesiastical authorities of the place. Carneadero is said to be the same place which was afterwards called Las Animas. But the record fails to show that he or his representatives ever had any grant or license for it previous to 1835.

On the 15th of April, 1852, one Sanchez, who had succeeded to the rights of the licensee, whatever they may have been, petitioned the Board of Land Commissioners for the confirmation of his title to Las Animas. On the 14th of February, 1854, the board confirmed his claim, and on the 25th of January, 1859, the claim was confirmed by the District Court.

Some time in 1859 a survey was made, which was afterwards set aside at the instance of third parties who intervened. A new survey was made, to which the claimants took exceptions, and upon its confirmation by the District Court an appeal was taken by the claimants to the Circuit Court, where it was finally approved in 1866.

Both these titles were for certain quantities of land without any definite boundaries, and a survey was absolutely necessary to fix the location of either. We do not say that the location of the Solis tract was more certain, either by the grant or the confirmation, than that of Las Animas; but so far as our rights can now be made to depend upon any fact in the case existing previous to the actual survey, we have the advantage of the oldest grant and the first confirmation, and we maintain that we had a right to take into our survey any land which was not then held under another and an older title definitely located.

Las Animas was a mere float. We do not assert that Solis, previous to the survey, was better than a float. The boundaries of neither the one nor the other was ascer-

tained; but ours being ascertained by the survey, and the land included in it legally appropriated under a patent based upon the survey, we maintain that it is wholly incompetent for the plaintiffs to set up title under another float, which they have presumed to locate upon the same land, seven years after the date of our survey, and after our possession during all that time under a patent from the United States.

For argument in the cause, and for a full answer to everything said in the brief of the plaintiffs in error, we refer the court to the careful, well-considered, and able opinion of the Supreme Court of California. (Rec., p. 83.) For authority we cite the same cases there cited, and add the case of *Henshaw* v. *Bissell*, 18 Wall., 255, decided by this court since that time.

By the last-named case it is settled that a Mexican title, finally confirmed for specific lands described with absolute certainty, cannot be defeated by the location upon it of an indescriptive or floating grant, although the float may have been so located before any official survey under the descriptive grant.

This rule is based upon the principle that a grant declared to be valid and genuine for certain lands, with boundaries accurately described, gives to the grantee a legal as well as an equitable title to that specific property. His right is settled by the grant and the confirmation as completely as it could be settled by any survey. If a subsequent survey of a shifted or indescriptive grant could take away his title and vest it in another it would be simple robbery. There is no right of election in such a case. The grantee of the specific land must take what is described in his grant or take nothing; and when the owner of a float comes to locate it he must confine himself to the public domain, and keep his hands off from lands already appropriated to private use.

But it is equally well settled that where there are two titles, both of which are indescriptive and uncertain, a survey is necessary to make a good title, or any title at all, to

particular lands. Until a survey is made one party has as good a right as the other to take the land which both wish to have, but which is not specifically granted to either.

It follows that the elder survey in such a case, if approved by the proper authority and followed by the patent, is the paramount title.

The land in dispute is not described in the plaintiffs' grant nor in the decree of confirmation. No boundaries are mentioned which include it. It does not appear that the plaintiffs, or any predecessor of theirs, ever claimed it as part of Las Animas until long after it was surveyed and patented to the defendants as part of Solis.

Would it not shock all sense of justice to say that the lands of these defendants, which they have bought and paid for, and which they are in possession of under a Mexican grant confirmed, surveyed, and patented, shall lose their property to make way for claimants whose only title is a younger grant, a later confirmation, and a subsequent survey?

Is not the patent to us binding upon the United States and all persons who were in privity with them at the time of its date? We contend that the plaintiffs were not third persons in that proceeding. But we were third parties, and therefore not affected by anything done between the United States and the plaintiffs when their survey was made.

J. S. Black,
D. Dudley Field,
For Defts. in E.

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vol 12, p 33



Supreme Court of the United States.

MILLER *et als.*
vs.
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I print what I was excused from reading on the argument, taking it from the brief of Mr. Archer and Mr. Felton, which they used in the State court.

But first I ask the court to look at the deseño and the surveys, both of them, which were made under the decree in favor of Las Animas. If the deseño and the survey under which the plaintiffs now claim be compared with one another it will be made absolutely certain that wherever else this location may be made it certainly was not made according to the decree nor according to the grant, since the survey differs from the deseño in all its lines, in shape, dimensions, and every topographical feature of the land upon which it is laid.

I now use the brief referred to:

IV.

The respondents contend that there never has been a final survey of Las Animas under the decree of 26th January, A. D. 1864. (See Transcript, pages 130 and 132.)

By the decree of January 26th, 1864, a new survey was ordered by the court, according to certain descriptions given in the decree. These descriptions are taken partly from the descriptions of other ranchos, partly from the Wallace map or first survey of Las Animas, and partly by protracting lines on paper.

The surveyor general, without making any survey on the ground at all, compiled a plat partly from the field-notes of surveys of adjoining ranchos of record in the office of the surveyor general, partly of surveys made of the rancho Las Animas, and in one case by protracting a line which had never been run on the ground.

Both of the surveyors who testified in this case, as well as the one who testified for appellant as for respondent, agreed that this plat was not a patent plat.

C. BIERLOWSKI, called for the plaintiff, testified as follows: "I could not locate the plat of the Animas on the ground without the field-notes, but with them I could do so." And witness also stated that the table of field-notes was not on the map or plat, and that a survey could not be made on the ground without them. Also, *that a patent could not be obtained on that map. The Department would not issue a patent on such.* (Transcript, p. 34.)

So also JOHN A. BREWSTER (Trans., p. 36) testifies: "From this plat I could not locate the land for want of the field-notes of the survey. This map is compiled partly from the field-notes of surveys of adjoining ranchos of record in the office of the surveyor general and partly of surveys made of lands of this rancho as here shown. I would not consider it a *patent map, nor a map from which* to make out a patent. Field-notes are required in a patent. The plat shown me *may* be perfectly correct. It *is not a map or plat of a survey.* A survey is made by running lines on the ground. This is only a map or plat of a location. One of the lines was never run on any survey. No patent could issue upon it. *Surveys are always made on the ground,* and the surveyor is governed by rules and instructions."

The plat itself is certified by the Attorney General as follows:

"I certify that this plat is a correct location of the Rancho Las Animas, in accordance with the decree of the United States District Court dated January 26th, 1864." The certificate does not pretend that it is a survey. (See Transcript Map between pages 36 and 37.)

So also in the decree of Judge Hoffman, this map is not approved as a survey, but as a *plat or location*, and it is attached to the decree as a part of the decree for a full and particular description of the land finally confirmed herein. (Transcript, 133.) Here, evidently, the Judge confirms it as a description of the land, as the material from which a survey may be made, but not as a survey. The survey yet remained to do.

Now, the language of the act of 1860 gives only to *the plat and survey* the same effect and validity in law as if a patent had been issued by the United States.

What is this plat and survey to which this effect is given? Clearly not to a mere location. If that were not so, then the location by Judge Hoffman, without any survey, would be sufficient to have this effect. In Judge Hoffman's decree of 26th June, A. D. 1864, he locates the land which he orders to be surveyed. Yet, would this location be a survey equivalent to a patent within the meaning of the act?

In that decree Judge Hoffman orders this location to be *surveyed*—not compiled from data existing in the Surveyor General's office. But this survey has never been made.

Again: the act of 1860 provides that the Surveyor General shall, when a survey is set aside as erroneous, cause *a new* survey and location to be made. This new survey still remains to be made. (See act 1860, sec. 9.)

Then again, by section ten, the survey and plat, which have the force of a patent, are the same survey and plat which the Surveyor General is required to send to the land office, and on which a patent is to issue. Here is no survey and plat on which a patent could issue, or which the Surveyor General would be justified in sending to the land office.

It is no argument against us to say that this location is definite and that the land embraced therein can be accurately ascertained. It is not a question of ascertaining the land. That doubtless could be done from Judge Hoffman's decree. The question is, whether the appellants

have produced a *survey or plat which, according to the statute of* 1860, *has a certain effect.* To no other mode or manner of ascertaining the land is the effect of a patent given by statute.

It is clear that the whole effect by the statute of 1860 is given to the survey or plat, the last official act of the Surveyor General preceding the issuance of a patent. No other survey can have that effect. It is from its official statutory character that it derives its force and effect as a patent. A survey made by a competent surveyor of land clearly defined in a decree would not have this effect for the simple reason that the statute does not give this effect of it. The force given to a survey which gives it the effect of a patent is wholly the creation of the statute. No other kind of survey has this effect.

Beside, the law which gives to a survey or plat the force of a patent was repealed before the plat was made or approved.

The plat was certified on the 6th day of June, A. D. 1865, and approved on the 11th day of June, 1865.

The act of 1864 went into effect prior to the making of the plat of location or its approval.

Thus far we have shown—

1st. That at the date of the passage of the act of 1860 there was not in existence any approved survey of Las Animas; that the Wallace map, on file in the District Court, had no official character; that only a copy of that was on file in the District Court, and that the original was in the office of the Surveyor General, and that consequently the survey should have been first approved by the Surveyor General, and then published by him, before the District Court could have any jurisdiction over it.

2d. That the District Court wholly annulled whatever survey was in existence at the time of the passage of the act of 1860, and ordered a new survey; that that new survey for the first time included the land of respondents, and that consequently the respondents were entitled to a notice

that their lands were threatened; that this not having been done they have had no day in court.

3d. That the District Court has never granted the application of any one to be heard in opposition to the Wallace survey, and that an order granting an application is essential to the jurisdiction of the court; that until such order is granted, there is no proceeding in existence for the purpose of contesting a survey.

4th. That under the decree of Judge Hoffman, directing a new survey to be made, no new survey was made, and that the mere location not made on the ground, but compiled from other surveys, was not such a survey as the statute contemplates, and to which it gives the force of a patent.

5th. That the location on which appellants rely was made after the act of 1860 was repealed.

V.

We now proceed to discuss the question, What effect would a final survey have, under the act of 1860, as against a patent, on the hypothesis that everything has been done regularly under the law of 1860?

We would respectfully ask the permission of the court to examine this question as if it were entirely a new one, before we discuss the effect of the decisions heretofore rendered in this court.

The appellants contend that a full compliance with this act gives to the survey made under it the effect of a judgment *in rem;* that this judgment goes to the extent of deciding, not merely that the particular survey was correct, as following and conforming to the decree of the court confirming the land grant, but that it binds all persons claiming under other surveys made under other decrees of the same court; that such a survey would have the effect, not merely of a patent of the United States, but also of a judgment that all other surveys in conflict therewith are void; that all the decrees under which

such conflicting surveys were made were null, and that all patents of the United States issued under such conflicting surveys and patents were annulled and set aside.

According to this doctrine, one who has a perfect grant, which there was no necessity of presenting to the United States court at all for confirmation, would lose such grant by failing to observe in some newspaper, printed once a week for four weeks—in some newspaper not specified, published in San Francisco, and in another newspaper, published nearest the land—that a certain plat of another ranch has been made, and that the Surveyor General has approved the plat or survey.

A man has, as in this case, carried his suit for confirmation through all the courts; has had his survey made by the proper officer, and has received a patent from the United States; has sold to hundreds of families in small tracts, and they have erected thereon their homes, on the faith of a title from the United States.

A notice, not from any court, but from an executive land officer, is published four times in a newspaper arbitrarily selected by the officer. This notice is not addressed to any one, does not contain any description of any land, but simply states that the survey of a ranch is completed and is on file in the Surveyor General's office. If any one of these hundreds of persons should happen to be absent from the State or fail to have his attention drawn to that particular paper, or if he should be ignorant of the fact that the survey covers his land—a fact which he must learn outside of the notice—in spite of final confirmation, survey, and patent, his title to his land is gone.

Certainly a statute should be so drawn as to leave no doubt as to the intention of the law-makers before a court would construe it to have such an effect.

In this case there is not a word in the statute indicative of any such intention, but the contrary intention is clearly apparent in every section and line.

In the first place, the act of 1860 presupposes a final determination of a land grant by a decree of court of com-

petent jurisdiction, and that the time of taking any appeal from that decree is past. Nothing then remains but to execute that decree, by segregating the land by means of a survey.

As the decree is final, there is evidently no mode of setting it aside, except in a proceeding brought for that purpose acting directly upon it.

The simple question for the court to determine is, not whether the decree is erroneous, nor whether it should be set aside, but whether it embraces such and such land. Evidently the court has, at the stage of proceeding at which it has arrived, before it is a question of approving a final survey, no discretion at all about carrying into effect the final decree. That decree is in full force; there is no appeal from it. How can the court avoid giving it its full effect?

Even if some judicial proceeding could be framed, which would call into court and decide over again all the decrees affecting the same piece of land, it is clear that no such proceedings were intended by this act; for this act, in no section or line, gives to the court any right to reserve, modify, or change in any respect its decree. It can change or modify the survey; it can determine in what manner to execute the decree; but the decree stands as something to which the court must give its full force and effect.

Again: there may be three or four final decrees, with as many final surveys. Now, the court has only the right to change or modify the particular survey in the case before it. It cannot modify or change any of the decrees or surveys on which the intervenors rely. For illustration, take the case at bar. Here we have the El Solis decree with its final survey. On the hypothesis of the other side the claimants under this decree must intervene in the Las Animas survey, and prevent the survey from covering them, or lose their land. But the court has no power to modify or change the El Solis survey, relocate it, or determine where it shall be. It has simply the power to determine where the Las Animas survey shall be. Sup-

pose, now, the court should come to the conclusion that the survey of El Solis was erroneous: it has no power to correct it, and the consequence would be that the El Solis claimants would lose their land altogether. In other words, there is no provision in this act for bringing all these surveys before the court so as to adjust and determine them.

Again: the survey under the act of 1860 becomes final in the hands of the Surveyor General, if there is no objection to it; but the publication by the Surveyor General is not a judicial proceeding, nor a proceeding issuing out of any court—it is the act of an executive office merely; neither does his publication notify the parties of their rights, or that they are to do anything, or of the time in which or the place where their remedy is to be pursued; neither does it notify parties that their land is included in the survey. There is nothing about this publication in the nature of a summons. There is nothing in the law regulating what paper shall publish his notice. There is no time fixed within which an applicant shall be heard to contest the survey, or, for failure, shall be defaulted. The time for publication is short, so that a man absent from the State, or sick, or on a voyage, cannot get notice; so that this question, vital to a man, whether he shall lose his property or not, is left to mere chance. If a man happens to take a certain paper and read the whole of it, and if he happens to know what land is comprehended in a certain survey, of which the paper gives him no notice, and if he happens to know the statute of 1860, he may find out that to save his property he must go into the District Court and there contest a survey.

It may be answered that a man is bound to know the law, and that it is his misfortune if he does not. But the very object of a summons is to inform a man ignorant of his rights what he must do. It is a notice to him that, unless he does a certain thing within a certain time, certain consequences will follow; and in this act of 1860 no such summons or notice is provided. The simple notice

of the Surveyor General in a case like this would be, "I have approved of the plat or survey of Las Animas—the original is on file in my office." What sort of notice is this to persons ignorant of the law?

If, now, this survey is not objected to, it becomes final. But evidently it is not final because of any judicial proceedings; for none have been had. The Surveyor General is not an officer of the court; nor is his act in any respect judicial; nor has he made any summons; nor has there been any notice to the parties; nor has there been any default.

But it is said that when a Surveyor General has given the simple notice that he has made a final survey of a ranch, every one is bound to see the newspaper which he has selected, to guess at the fact that that survey affects him, to know that the law prescribes a certain remedy and to have recourse to it.

Let us see what that remedy is. The party objecting must apply to the District Court to return the survey, and that court, or the judge in vacation, shall proceed summarily or on affidavits or otherwise to inquire into the fact of such interest, and shall, in its discretion, determine whether the applicant has such an interest therein as under the circumstances of the case to make it proper that he should be heard in opposition to the survey, and shall grant or refuse the order to return the survey and location as shall be just.

It is not, then, a matter of right for all parties to intervene in this matter. They must have an interest in the survey, and the court may summarily give or refuse them the right to contest the survey. *From his order there is no appeal.*

Suppose, now, a judge in vacation, on affidavits presented, refuses to order a return of a survey, the survey then becomes final: is it possible that this order is to have the effect of overturning final decrees of the Supreme Court of the United States—final surveys and solemn patents? Is this decision, that the applicant has no such in-

terest in the survey in question as to entitle him to have a return of the survey—a decision summarily rendered, on affidavits, in term time or vacation—a decision without appeal—to have the effect of a final adjudication, annulling rights which have been sanctioned by judgments of the highest tribunals of the land, obtained after years of delay, of expense, and litigation?

It would seem to us that this simple consideration, that a man's right to contest a survey depends on this summary unappealable order of a judge in vacation, is conclusive to show that such an order cannot act as a judgment *in rem* annulling or modifying the final decree and survey which he has previously obtained.

Again, there is no provision in the act for the long and tedious process which would be necessary on the hypothesis that under this act the question of the correctness of former decisions of the original equities of the parties, of whether former surveys correspond or not to the decrees under which they were made, were to be litigated anew. The "court shall adopt rules providing for the prompt and summary decision of all controversies on surveys and locations." (See section 8, Statute 1860.)

Again, by section 9, the whole controversy is to be limited "as to any matters to show the true and proper location of the claim." This is the real question: *What is the true and proper location of the claim?*

Not whether other surveys have been properly made. Not whether the location under a decree in another case is the true and proper one, but whether under the particular decree the location and survey conform to it.

In his decision the judge is limited to answering this one question: Is the survey as made the true and proper one under the existing decree?

His action is limited to this. He can affirm the survey, correct or modify it, or order a new survey. But he has no right to suppress the survey altogether, as he would have on the hypothesis that he was judging of the merits of the respective claims. Suppose the judge on this pro-

ceeding were to decide that the original title of Las Animas was inferior and secondary to the title of El Solis: in that case, on the theory of the other side, he would have to adjudge that no survey of Las Animas should be made at all; that the whole claim of Las Animas was void as against the El Solis. But is there any authority under this act for such a decree? Suppose there are, as sometimes happens, two final confirmations of two grants made for identically the same lands. Here the Surveyor General would be obliged to make the same survey for both. What authority in this proceeding has the District Court to destroy the effect of one of the decrees by refusing to carry it into execution? What power would he have to set aside the former survey? So in this case, what power has the judge to set aside or annul the El Solis survey, made as it was under a final decree of the court? What power has he, in this collateral proceeding, to attack, set aside, or annul the El Solis patent?

Again, the statute of 1860 defines what shall be the force of a final survey under the act of 1860. It shall be equivalent to a patent. But when did a patent of a later date have the effect of destroying all patents of a former date?

Again, the law of 1851 is still in force, as to the mode of proceeding to examine the validity of a land claim, and as to the effect of a final decree. Now, suppose that I were proceeding in the District Court to obtain a confirmation of my title, and pending any decision another person were to apply under the law of 1860 for a final survey of the land embraced in my grant: what is my position? My claim is yet undetermined. Am I to stop short and have the whole matter litigated in the collateral proceeding for a survey? Or suppose I apply to the court for leave to intervene, and the court refuses me on the ground that my rights are still undetermined in court; that I have no decision as to whether my grant is valid or not: would the order of the judge refusing me the right to intervene bar me from subsequently getting a decree covering the same land? or if I got the decree, would such an order prevent

me from getting my survey or my patent? or when I got my survey and my patent, would this order render both of them useless to me on the ground that the order of the court refusing to return the first survey, was *in rem*, a judicial proceeding and bound me?

Or take the case in another aspect: I have an inchoate grant for a piece of land; its validity is not yet determined, but proceedings are pending seeking for a confirmation; in the meanwhile another person has obtained a confirmation for the same tract of land, and is seeking to obtain a survey: can I resist his survey when I have as yet got no title to the land; or can I tie him up till my case is decided; or must the District Court judge of the validity of my title in a collateral proceeding before the direct decision is rendered?

The ridiculous consequences of trying to make this proceeding of the law of 1860 a proceeding *in rem* are endless.

The truth is, the law of 1860 did not affect the jurisdiction of the courts of the United States in determining the validity of the land grants, nor did it change the effect of their decrees. It did not provide for a tribunal which should in a collateral proceeding determine whether a decree, survey, or patent was or was not valid. It simply provided a mode of summarily correcting a survey so as to make it conform to the decree, or so as to make it avoid other vested rights, when that could be done without violating the decree.

Under the law of 1864, the same opportunity exists to make objections to surveys. There is the same publication by the Surveyor General; the same retaining in his office of the survey and plat, only for a longer time, ninety days from the date of the first publication in San Francisco. If no objections are made, the survey becomes final. If objections are made, the survey with objections and proof are transmitted to the Commissioner of the General Land Office at Washington. There the case is heard, new evidence is taken, and the matter finally decided.

See Act of 1864, sec. 14.

In addition permit me to cite the case of Maguire *v.* Tyler, 8th Wallace, 661. The court says:

"Cases may be found in which it was held, that when Congress had confirmed an incomplete title, and subsequently confirmed another and a different claim for the same land, that the elder confirmation defeated the younger. But the settled rule of the court is that as between two claimants under the former Government, setting up independent imperfect claims to the same parcel of land, the courts of justice have no jurisdiction to determine the controversy; that in such a case it *belongs to the political power to decide to whom the proper title shall issue.*"

J. S. BLACK.